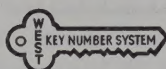


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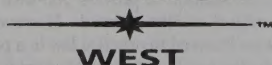


Volume 28

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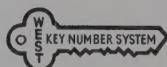
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WORDS AND PHRASES

"A word is not crystal, transparent and unchanging, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

*Justice Holmes,
245 U.S. 418, 38 S.Ct.
158,62 L.Ed.2d 372.*

The interpretation or meaning attributed to a word or a phrase in a statute, court rule, administrative regulation, business document or agreement often determines rights, duties, obligations and liabilities thereunder or a controversy between parties.

The courts, state and federal, determine the meaning given to words and to phrases in issue in the context of specific facts and particular issues. New developments in the economic, political and social life of the nation are reflected in the laws and in the kinds of controversies which the courts are called upon to resolve. The result is frequently that in judicial opinions established words and phrases acquire new significance or relevance.

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Through modern pocket part supplementation, all of the new judicial constructions and interpretations of words and phrases are promptly supplied as they become available from the decisions of the courts of the nation.

THE PUBLISHER

March, 2003

ABBREVIATIONS

Aband L P	Abandoned and Lost Property.	Banks	Banks and Banking.
Abate & R	Abatement and Revival.	Ben Assoc	Beneficial Association.
Abort	Abortion and Birth Control.	Big	Bigamy.
Absentees	Absentees.	Bills & N	Bills and Notes.
Abstr of T	Abstracts of Title.	Bonds	Bonds.
Accession	Accession.	Bound	Boundaries.
Accord	Accord and Satisfaction.	Bounties	Bounties.
Acct	Account.	Breach of M P	Breach of Marriage Promise.
Acct Action on	Account, Action on.	Breach of P	Breach of the Peace.
Acct St	Account Stated.	Brib	Bribery.
Accnts	Accountants.	Bridges	Bridges.
Ack	Acknowledgment.	Brok	Brokers.
Action	Action.	B & L Assoc	Building and Loan Associations.
Action on Case	Action on the Case.	Burg	Burglary.
Adj Land	Adjoining Landowners.	Canals	Canals.
Admin Law	Administrative Law and Procedure.	Can of Inst	Cancellation of Instruments.
Adm	Admiralty.	Carr	Carriers.
Adop	Adoption.	Cem	Cemeteries.
Adulteration	Adulteration.	Census	Census.
Adultery	Adultery.	Cert	Certiorari.
Adv Poss	Adverse Possession.	Champ	Champertry and Maintenance.
Afft	Affidavits.	Char	Charities.
Agric	Agriculture.	Chat Mtg	Chattel Mortgages.
Aliens	Aliens.	Chem Dep	Chemical Dependents.
Alt of Inst	Alteration of Instruments.	Child C	Child Custody.
Amb & C	Ambassadors and Consuls.	Child S	Child Support.
Am Cur	Amicus Curiae.	Child	Children Out-of-Wedlock.
Anim	Animals.	Citiz	Citizens.
Annuities	Annuities.	Civil R	Civil Rights.
App & E	Appeal and Error.	Clerks of C	Clerks of Courts.
Appear	Appearance.	Clubs	Clubs.
Arbit	Arbitration.	Colleges	Colleges and Universities.
Armed S	Armed Services.	Collision	Collision.
Arrest	Arrest.	Commerce	Commerce.
Arson	Arson.	Com Fut	Commodity Futures Trading Regulation.
Assault	Assault and Battery.	Com Lands	Common Lands.
Assign	Assignments.	Com Law	Common Law.
Assist	Assistance, Writ of.	Comp Off	Compounding Offenses.
Assoc	Associations.	Compromise	Compromise and Settlement.
Assumpsit	Assumpsit.	Condo	Condominium.
Asyl	Asylums.	Confusion of G	Confusion of Goods.
Attach	Attachment.	Consp	Conspiracy.
Atty & C	Attorney and Client.	Const Law	Constitutional Law.
Atty Gen	Attorney General.	Cons Cred	Consumer Credit.
Auctions	Auctions and Auctioneers.	Cons Prot	Consumer Protection.
Aud Quer	Audita Querela.	Contempt	Contempt.
Autos	Automobiles.	Contracts	Contracts.
Aviation	Aviation.	Contrib	Contribution.
Bail	Bail.		
Bailm	Bailment.		
Bankr	Bankruptcy.		

ABBREVIATIONS

Controlled Subs	Controlled Substances.	Exceptions Bill of	Exceptions, Bill of.
Conversion	Conversion.	Exch of Prop	Exchange of Property.
Convicts	Convicts.	Exchanges	Exchanges.
Copyr	Copyrights and Intellectual Property.	Execution	Execution.
Coroners	Coroners.	Ex & Ad	Executors and Administrators.
Corp	Corporations.	Exempt	Exemptions.
Costs	Costs.	Explos	Explosives.
Counterfeit	Counterfeiting.	Extort	Extortion and Threats.
Counties	Counties.	Extrad	Extradition and Detainers.
Court Comrs	Court Commissioners.	Fact	Factors.
Courts	Courts.	False Imp	False Imprisonment.
Cov Action of	Covenant, Action of.	False Pers	False Personation.
Covenants	Covenants.	False Pret	False Pretenses.
Cred R A	Credit Reporting Agencies.	Fed Civ Proc	Federal Civil Procedure.
Crim Law	Criminal Law.	Fed Cts	Federal Courts.
Crops	Crops.	Fences	Fences.
Cust & U	Customs and Usages.	Ferries	Ferries.
Cust Dut	Customs Duties.	Fines	Fines.
Damag	Damages.	Fires	Fires.
Dead Bodies	Dead Bodies.	Fish	Fish.
Death	Death.	Fixt	Fixtures.
Debt Action of	Debt, Action of.	Food	Food.
Debtor & C	Debtor and Creditor.	Forci E & D	Forcible Entry and Detainer.
Decl Judgm	Declaratory Judgment.	Forfeit	Forfeitures.
Dedi	Dedication.	Forg	Forgery.
Deeds	Deeds.	Franch	Franchises.
Dep & Escr	Deposits and Escrows.	Fraud	Fraud.
Dep in Court	Deposits in Court.	Frds St of	Frauds, Statute of.
Des & Dist	Descent and Distribution.	Fraud Conv	Fraudulent Conveyances.
Detectives	Detectives.	Game	Game.
Detinue	Detinue.	Gaming	Gaming.
Disorderly C	Disorderly Conduct.	Garn	Garnishment.
Disorderly H	Disorderly House.	Gas	Gas.
Dist & Pros Attys	District and Prosecuting Attorneys.	Gifts	Gifts.
Dist of Col	District of Columbia.	Good Will	Good Will.
Distur of Pub A	Disturbance of Public Assemblage.	Gr Jury	Grand Jury.
Divorce	Divorce.	Guar	Guaranty.
Domicile	Domicile.	Guard & W	Guardian and Ward.
Double J	Double Jeopardy.	Hab Corp	Habeas Corpus.
Dower & C	Dower and Curtesy.	Hawk & P	Hawkers and Peddlers.
Drains	Drains.	Health	Health.
Ease	Easements.	High	Highways.
Eject	Ejection.	Holidays	Holidays.
Elect of Rem	Election of Remedies.	Home	Homestead.
Elections	Elections.	Homic	Homicide.
Electricity	Electricity.	Hus & W	Husband and Wife.
Embez	Embezzlement.	Impl & C C	Implied and Constructive Contracts.
Em Dom	Eminent Domain.	Improv	Improvements.
Emp Liab	Employers' Liability.	Incest	Incest.
Entry Writ of	Entry, Writ of.	Indem	Indemnity.
Environ Law	Environmental Law.	Indians	Indians.
Equity	Equity.	Ind & Inf	Indictment and Information.
Escape	Escape.	Infants	Infants.
Escheat	Escheat.	Inj	Injunction.
Estates	Estates in Property.	Inn	Innkeepers.
Estop	Estoppel.	Inspect	Inspection.
Evid	Evidence.		

ABBREVIATIONS

Insurance.....	Insurance.	Obscen.....	Obscenity.
Insurrect.....	Insurrection and Sedition.	Obst Just.....	Obstructing Justice.
Interest.....	Interest.	Offic.....	Officers and Public Employees.
Int Rev.....	Internal Revenue.	Pardon.....	Pardon and Parole.
Intern Law.....	International Law.	Parent & C.....	Parent and Child.
Interpl.....	Interpleader.	Parl Law.....	Parliamentary Law.
Int Liq.....	Intoxicating Liquors.	Parties.....	Parties.
Joint Adv.....	Joint Adventures.	Partit.....	Partition.
Joint-St Co.....	Joint-Stock Companies and Business Trusts.	Partners.....	Partnership.
Joint Ten.....	Joint Tenancy.	Party W.....	Party Walls.
Judges.....	Judges.	Pat.....	Patents.
Judgm.....	Judgment.	Paymt.....	Payment.
Jud S.....	Judicial Sales.	Penalties.....	Penalties.
Jury.....	Jury.	Pensions.....	Pensions.
J P.....	Justices of the Peace.	Perj.....	Perjury.
Kidnap.....	Kidnapping.	Perp.....	Perpetuities.
Labor.....	Labor Relations.	Pilots.....	Pilots.
Land & Ten.....	Landlord and Tenant.	Plead.....	Pleading.
Larc.....	Larceny.	Plgs.....	Pledges.
Levees.....	Levees and Flood Control.	Poss Warr.....	Possessory Warrant.
Lewd.....	Lewdness.	Postal.....	Postal Service.
Libel.....	Libel and Slander.	Powers.....	Powers.
Licens.....	Licenses.	Pretrial Proc.....	Pretrial Procedure.
Liens.....	Liens.	Princ & A.....	Principal and Agent.
Life Est.....	Life Estates.	Princ & S.....	Principal and Surety.
Lim of Act.....	Limitation of Actions.	Prisons.....	Prisons.
Lis Pen.....	Lis Pendens.	Priv Roads.....	Private Roads.
Logs.....	Logs and Logging.	Proc.....	Process.
Lost Inst.....	Lost Instruments.	Prod Liab.....	Products Liability.
Lotteries.....	Lotteries.	Prohib.....	Prohibition.
Mal Mis.....	Malicious Mischief.	Propty.....	Property.
Mal Pros.....	Malicious Prosecution.	Prost.....	Prostitution.
Mand.....	Mandamus.	Pub Contr.....	Public Contracts.
Manuf.....	Manufactures.	Pub Lands.....	Public Lands.
Mar Liens.....	Maritime Liens.	Pub Ut.....	Public Utilities.
Marriage.....	Marriage.	Quiet T.....	Quieting Title.
Mast & S.....	Master and Servant.	Quo W.....	Quo Warranto.
Mayhem.....	Mayhem.	RICO.....	Racketeer Influenced and Corrupt Organizations.
Mech Liens.....	Mechanics' Liens.	R R.....	Railroads.
Mental H.....	Mental Health.	Rape.....	Rape.
Mil Jus.....	Military Justice.	Real Act.....	Real Actions.
Militia.....	Militia.	Receivers.....	Receivers.
Mines.....	Mines and Minerals.	Rec S Goods.....	Receiving Stolen Goods.
Monop.....	Monopolies.	Recogn.....	Recognizances.
Mtg.....	Mortgages.	Records.....	Records.
Motions.....	Motions.	Refer.....	Reference.
Mun Corp.....	Municipal Corporations.	Ref of Inst.....	Reformation of Instruments.
Names.....	Names.	Reg of Deeds.....	Registers of Deeds.
Nav Wat.....	Navigable Waters.	Release.....	Release.
Ne Ex.....	Ne Exeat.	Relig Soc.....	Religious Societies.
Neglig.....	Negligence.	Remaind.....	Remainders.
Neut Laws.....	Neutrality Laws.	Rem of C.....	Removal of Cases.
Newsp.....	Newspapers.	Replev.....	Replevin.
New Tr.....	New Trial.	Reports.....	Reports.
Notaries.....	Notaries.	Rescue.....	Rescue.
Notice.....	Notice.	Revers.....	Reversions.
Nova.....	Novation.	Review.....	Review.
Nuis.....	Nuisance.		
Oath.....	Oath.		

ABBREVIATIONS

Rewards	Rewards.
Riot	Riot.
Rob	Robbery.
Sales	Sales.
Salv	Salvage.
Schools	Schools.
Sci Fa	Scire Facias.
Seals	Seals.
Seamen	Seamen.
Searches	Searches and Seizures.
Sec Tran	Secured Transactions.
Sec Reg	Securities Regulation.
Seduct	Seduction.
Sent & Pun	Sentencing and Punishment.
Sequest	Sequestration.
Set-Off	Set-Off and Counterclaim.
Sheriffs	Sheriffs and Constables.
Ship	Shipping.
Sig	Signatures.
Slaves	Slaves.
Social S	Social Security and Public Welfare.
Sod	Sodomy.
Spec Perf	Specific Performance.
Spendthrifts	Spendthrifts.
States	States.
Statut	Statutes.
Steam	Steam.
Stip	Stipulations.
Submis of Con	Submission of Controversy.
Subrog	Subrogation.
Subscrip	Subscriptions.
Suicide	Suicide.
Sunday	Sunday.
Supersed	Supersedeas.
Tax	Taxation.
Tel	Telecommunications.
Ten in C	Tenancy in Common.

Tender	Tender.
Territories	Territories.
Theaters	Theaters and Shows.
Time	Time.
Torts	Torts.
Towage	Towage.
Towns	Towns.
Trade Reg	Trade Regulation.
Treason	Treason.
Treaties	Treaties.
Tresp	Trespass.
Tresp to T T	Trespass to Try Title.
Trial	Trial.
Trover	Trover and Conversion.
Trusts	Trusts.
Turnpikes	Turnpikes and Toll Roads.
Undertak	Undertakings.
U S	United States.
U S Mag	United States Magistrates.
U S Mar	United States Marshals.
Unlawf Assemb	Unlawful Assembly.
Urb R R	Urban Railroads.
Usury	Usury.
Vag	Vagrancy.
Ven & Pur	Vendor and Purchaser.
Venue	Venue.
War	War and National Emergency.
Wareh	Warehousemen.
Waste	Waste.
Waters	Waters and Water Courses.
Weap	Weapons.
Weights	Weights and Measures.
Wharves	Wharves.
Wills	Wills.
Witn	Witnesses.
Woods	Woods and Forests.
Work Comp	Workers' Compensation.
Zoning	Zoning and Planning.

DIGEST TOPICS

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ad(after 12-31-02) & 95K155.

1	Abandoned and Lost Property	42	Assumpsit, Action of	76H	Children Out-of-Wedlock
2	Abatement and Revival	43	Asylums	77	Citizens
4	Abortion and Birth Control	44	Attachment	78	Civil Rights
5	Absentees	45	Attorney and Client	79	Clerks of Courts
6	Abstracts of Title	46	Attorney General	80	Clubs
7	Accession	47	Auctions and Auctioneers	81	Colleges and Universities
8	Accord and Satisfaction	48	Audita Querela	82	Collision
9	Account	48A	Automobiles	83	Commerce
10	Account, Action on	48B	Aviation	83H	Commodity Futures Trading Regulation
11	Account Stated	49	Bail	84	Common Lands
11A	Accountants	50	Bailment	85	Common Law
12	Acknowledgment	51	Bankruptcy	88	Compounding Offenses
13	Action	52	Banks and Banking	89	Compromise and Settlement
14	Action on the Case	54	Beneficial Associations	89A	Condominium
15	Adjoining Landowners	55	Bigamy	90	Confusion of Goods
15A	Administrative Law and Procedure	56	Bills and Notes	91	Conspiracy
16	Admiralty	58	Bonds	92	Constitutional Law
17	Adoption	59	Boundaries	92B	Consumer Credit
18	Adulteration	60	Bounties	92H	Consumer Protection
19	Adultery	61	Breach of Marriage Promise	93	Contempt
20	Adverse Possession	62	Breach of the Peace	95	Contracts
21	Affidavits	63	Bribery	96	Contribution
23	Agriculture	64	Bridges	96H	Controlled Substances
24	Aliens	65	Brokers	97	Conversion
25	Alteration of Instruments	66	Building and Loan Associations	98	Convicts
26	Ambassadors and Consuls	67	Burglary	99	Copyrights and Intellectual Property
27	Amicus Curiae	68	Canals	100	Coroners
28	Animals	69	Cancellation of Instruments	101	Corporations
29	Annuities	70	Carriers	102	Costs
30	Appeal and Error	71	Cemeteries	103	Counterfeiting
31	Appearance	72	Census	104	Counties
33	Arbitration	73	Certiorari	105	Court Commissioners
34	Armed Services	74	Champerty and Maintenance	106	Courts
35	Arrest	75	Charities	107	Covenant, Action of
36	Arson	76	Chattel Mortgages	108	Covenants
37	Assault and Battery	76A	Chemical Dependents	108A	Credit Reporting Agencies
38	Assignments	76D	Child Custody	110	Criminal Law
40	Assistance, Writ of	76E	Child Support		
41	Associations				

DIGEST TOPICS

111	Crops	167	Factors	220	Internal Revenue
113	Customs and Usages	168	False Imprisonment	221	International Law
114	Customs Duties	169	False Personation	222	Interpleader
115	Damages	170	False Pretenses	223	Intoxicating Liquors
116	Dead Bodies	170A	Federal Civil	224	Joint Adventures
117	Death		Procedure	225	Joint-Stock Companies
117G	Debt, Action of	170B	Federal Courts		and Business Trusts
117T	Debtor and Creditor	171	Fences	226	Joint Tenancy
118A	Declaratory Judgment	172	Ferries	227	Judges
119	Dedication	174	Fines	228	Judgment
120	Deeds	175	Fires	229	Judicial Sales
122A	Deposits and Escrows	176	Fish	230	Jury
123	Deposits in Court	177	Fixtures	231	Justices of the Peace
124	Descent and	178	Food	232	Kidnapping
	Distribution	179	Forcible Entry and	232A	Labor Relations
125	Detectives		Detainer	233	Landlord and Tenant
126	Detinue	180	Forfeitures	234	Larceny
129	Disorderly Conduct	181	Forgery	235	Levees and Flood
130	Disorderly House	183	Franchises		Control
131	District and	184	Fraud	236	Lewdness
	Prosecuting	185	Frauds, Statute of	237	Libel and Slander
	Attorneys	186	Fraudulent	238	Licenses
132	District of Columbia		Conveyances	239	Liens
133	Disturbance of Public	187	Game	240	Life Estates
	Assemblage	188	Gaming	241	Limitation of Actions
134	Divorce	189	Garnishment	242	Lis Pendens
135	Domicile	190	Gas	245	Logs and Logging
135H	Double Jeopardy	191	Gifts	246	Lost Instruments
136	Dower and Curtesy	192	Good Will	247	Lotteries
137	Drains	193	Grand Jury	248	Malicious Mischief
141	Easements	195	Guaranty	249	Malicious Prosecution
142	Ejectment	196	Guardian and Ward	250	Mandamus
143	Election of Remedies	197	Habeas Corpus	251	Manufactures
144	Elections	198	Hawkers and Peddlers	252	Maritime Liens
145	Electricity	198H	Health	253	Marriage
146	Embezzlement	200	Highways	255	Master and Servant
148	Eminent Domain	201	Holidays	256	Mayhem
148A	Employers' Liability	202	Homestead	257	Mechanics' Liens
149	Entry, Writ of	203	Homicide	257A	Mental Health
149E	Environmental Law	205	Husband and Wife	258A	Military Justice
150	Equity	205H	Implied and	259	Militia
151	Escape		Constructive	260	Mines and Minerals
152	Escheat		Contracts	265	Monopolies
154	Estates in Property	206	Improvements	266	Mortgages
156	Estoppel	207	Incest	267	Motions
157	Evidence	208	Indemnity	268	Municipal Corporations
158	Exceptions, Bill of	209	Indians	269	Names
159	Exchange of Property	210	Indictment and	270	Navigable Waters
160	Exchanges		Information	271	Ne Exeat
161	Execution	211	Infants	272	Negligence
162	Executors and	212	Injunction	273	Neutrality Laws
	Administrators	213	Innkeepers	274	Newspapers
163	Exemptions	216	Inspection	275	New Trial
164	Explosives	217	Insurance	276	Notaries
165	Extortion and Threats	218	Insurrection and	277	Notice
166	Extradition and		Sedition	278	Novation
	Detainers	219	Interest	279	Nuisance

DIGEST TOPICS

280	Oath	327	Reference	369	Sunday
281	Obscenity	328	Reformation of Instruments	370	Supersedeas
282	Obstructing Justice	330	Registers of Deeds	371	Taxation
283	Officers and Public Employees	331	Release	372	Telecommunications
284	Pardon and Parole	332	Religious Societies	373	Tenancy in Common
285	Parent and Child	333	Remainders	374	Tender
286	Parliamentary Law	334	Removal of Cases	375	Territories
287	Parties	335	Replevin	376	Theaters and Shows
288	Partition	336	Reports	378	Time
289	Partnership	337	Rescue	379	Torts
290	Party Walls	338	Reversions	380	Towage
291	Patents	339	Review	381	Towns
294	Payment	340	Rewards	382	Trade Regulation
295	Penalties	341	Riot	384	Treason
296	Pensions	342	Robbery	385	Treaties
297	Perjury	343	Sales	386	Trespass
298	Perpetuities	344	Salvage	387	Trespass to Try Title
300	Pilots	345	Schools	388	Trial
302	Pleading	346	Scire Facias	389	Trover and Conversion
303	Pledges	347	Seals	390	Trusts
305	Possessory Warrant	348	Seamen	391	Turnpikes and Toll Roads
306	Postal Service	349	Searches and Seizures	392	Undertakings
307	Powers	349A	Secured Transactions	393	United States
307A	Pretrial Procedure	349B	Securities Regulation	394	United States Magistrates
308	Principal and Agent	350	Seduction	395	United States Marshals
309	Principal and Surety	350H	Sentencing and Punishment	396	Unlawful Assembly
310	Prisons	351	Sequestration	396A	Urban Railroads
311	Private Roads	352	Set-Off and Counterclaim	398	Usury
313	Process	353	Sheriffs and Constables	399	Vagrancy
313A	Products Liability	354	Shipping	400	Vendor and Purchaser
314	Prohibition	355	Signatures	401	Venue
315	Property	356	Slaves	402	War and National Emergency
316	Prostitution	356A	Social Security and Public Welfare	403	Warehousemen
316A	Public Contracts	357	Sodomy	404	Waste
317	Public Lands	358	Specific Performance	405	Waters and Water Courses
317A	Public Utilities	359	Spendthrifts	406	Weapons
318	Quieting Title	360	States	407	Weights and Measures
319	Quo Warranto	361	Statutes	408	Wharves
319H	Racketeer Influenced and Corrupt Organizations	362	Steam	409	Wills
320	Railroads	363	Stipulations	410	Witnesses
321	Rape	365	Submission of Controversy	411	Woods and Forests
322	Real Actions	366	Subrogation	413	Workers' Compensation
323	Receivers	367	Subscriptions	414	Zoning and Planning
324	Receiving Stolen Goods	368	Suicide		
325	Recognizances				
326	Records				



N

Ill. 1921. Judicial notice will be taken of meaning of "N." and "S." when applied to directions. The Supreme Court will take judicial notice that "N." and "S." when applied to directions are properly read north and south, and that "N. to S. end of W. avenue" means north and south end of W. avenue.—*Village of Bradley v. New York Cent. R. Co.*, 129 N.E. 744, 296 Ill. 383.—Evid 16.

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NACELLE

Pa. 1954. A "nacelle" is the enclosing shelter or cover of an airplane engine.—*Rennekamp v. Blair*, 101 A.2d 669, 375 Pa. 620.

NAGGED

Tex.Com.App. 1929. Testimony as to testatrix's statements that husband "nagged" her to sign will, but that she would not if in her right mind, held admissible on undue influence.—*Buchanan v. Davis*, 12 S.W.2d 978, rehearing denied 15 S.W.2d 562.—Wills 165(1).

NAGGING

Ga. 1940. The word "nagging" carries with it the idea of continuity.—*Alford v. Alford*, 7 S.E.2d 278, 189 Ga. 630.

N.M. 1933. "Nagging" is persistent urging by wife and exercise of domestic force that so irritates, disturbs, and wearies the mind that it is out of normal control, and deed procured by means of "nagging" may be set aside. Comp.St.1929, §§ 68-201, 68-401.—*Trigg v. Trigg*, 22 P.2d 119, 37 N.M. 296.—Deeds 72(5).

Pa.Super. 1942. "Nagging" as a personal indignity in a suit for divorce on the ground of personal indignities means to annoy by petty fault-finding or persistent scolding or urging or to be persistently worrying or irritating by continued fault-finding, scolding or urging and must be proved by specific instances of a course of conduct which falls within such definitions.—*Kolopen v. Kolopen*, 25 A.2d 569, 148 Pa.Super. 311.—Divorce 29(5).

NAIG SETTLEMENT

Minn. 1997. "Naig settlement" is one where settlement is given for all claims not covered by workers' compensation or not compensable under Workers' Compensation Act. M.S.A. § 176.011 et seq.—*Washington v. Milbank Ins. Co.*, 562 N.W.2d 801.—Work Comp 1130.

Minn. 1996. "Naig settlement" is an agreement between employee injured at work and a third-party tort-feasor compromising only those damages that

are not cognizable under Workers' Compensation Act. M.S.A. § 176.001 et seq.—*Jackson v. Zurich American Ins. Co.*, 542 N.W.2d 621.—Work Comp 2248.

Minn.App. 2000. A "Naig settlement" is an agreement between the injured employee and the third-party tortfeasor that settles only those damages that are not recoverable under workers' compensation law. M.S.A. § 176.061.—*Drake v. Reile's Transfer & Delivery, Inc.*, 613 N.W.2d 428.—Work Comp 2248.

Minn.App. 1993. In "Naig settlement," employer attempting to recover paid out workers' compensation benefits may not reach portions of settlement between employee and third party tort-feasor that have been properly allocated as nonrecoverable.—*State Dept. of Human Services v. Bengston*, 506 N.W.2d 38, review denied.—Work Comp 2251.

NAIL AND MAIL

C.A.2 (N.Y.) 1992. Under New York law, mere fact that abortion protestors had demonstrated their disregard for authority of court by disregarding its injunction did not establish, without more, the "impracticability" of serving notice of contempt proceedings upon protestors pursuant to "nail and mail" provision; service pursuant to alternate provision was not authorized, absent showing of any confusion as to protestors' residence or dwelling place, i.e., any impracticability. N.Y.McKinney's CPLR 308, subs. 4, 5.—*New York State Nat. Organization for Women v. Terry*, 961 F.2d 390, certiorari granted, vacated *Pearson v. Planned Parenthood Margaret Sanger Clinic (Manhattan)*, 113 S.Ct. 1233, 507 U.S. 901, 122 L.Ed.2d 640, on remand 996 F.2d 1351, certiorari granted, vacated 114 S.Ct. 2776, 512 U.S. 1249, 129 L.Ed.2d 888, on remand 41 F.3d 794, reinstated 996 F.2d 1351, certiorari granted, vacated 114 S.Ct. 2776, 512 U.S. 1249, 129 L.Ed.2d 888, on remand 41 F.3d 794.—Proc 81, 82.

N.Y.A.D. 2 Dept. 1994. Plaintiff failed to comply with "due diligence" requirement of statute pertaining to service of process on natural person and, thus, "nail and mail" service was not permissible; two of plaintiff's attempts at service were made in afternoon on weekdays, when working individuals cannot reasonably be expected to be home, and third attempt was on Saturday of Labor Day weekend. McKinney's CPLR 308, subd. 4.—*Scott v. Knoblock*, 611 N.Y.S.2d 265, 204 A.D.2d 299.—Proc 73.

N.Y.A.D. 2 Dept. 1988. Attempts to serve defendant in wrongful death action at her place of residence on weekdays during normal working hours did not constitute "due diligence" in effecting "personal service" so as to justify use of substituted form of service under "nail and mail" statutory provisions; defendant and her husband were employed at time service attempts were made, and defendant's actual notice of lawsuit did not cure jurisdictional defect. McKinney's CPLR 308,

subds. 1, 2, 4.—*DeShong v. Marks*, 535 N.Y.S.2d 19, 144 A.D.2d 623, appeal dismissed 550 N.Y.S.2d 279, 74 N.Y.2d 946, 549 N.E.2d 481, reargument denied 552 N.Y.S.2d 931, 75 N.Y.2d 866, 552 N.E.2d 179.—*Proc* 73.

N.Y.City Civ.Ct. 1981. Attempts to make service of process on weekday at 5:45 p. m. and on weekend at 12:05 p. m. constituted sufficient "due diligence" to authorize service under "nail and mail" provisions of section governing personal service upon natural person. CPLR 308, subd. 4.—*Union Garage, Inc. v. Wheatle*, 437 N.Y.S.2d 52, 108 Misc.2d 77.—*Proc* 90.

NAIL RODS

U.S.Mass. 1888. "Bar iron" means only such iron as is known as "bar iron" in the commercial sense, and iron in flat pieces less than one inch in width and three inches in thickness, known commercially as "nail rods," and never in a commercial sense designated as "bar iron," is not to be regarded as such within Rev.St. § 2504, Schedule E, fixing duty on bar iron.—*Worthington v. Abbott*, 8 S.Ct. 562, 124 U.S. 434, 31 L.Ed. 494.

NAILS

Cust.Ct. 1967. "Metal conduit fasteners", which were shaped like figure "7," and which were about two and one-fourth inches in length, and which had only one piercing point, were not "staples" or "nails" for customs duty purposes and were properly classified as articles or wares not specially provided for composed wholly or in chief value of iron or steel. *Tariff Act of 1930*, § 1, pars. 331, 397, 46 Stat. 590.—*Hal Marks and Associates v. U.S.*, 273 F.Supp. 527.—*Cust Dut* 26(3).

NAKED ASSESSMENT

C.A.8 1992. Inadvertent inclusion of some actually nontaxable deposits does not render commissioner's estimate of income a "naked assessment."—*Dodge v. C.I.R.*, 981 F.2d 350, rehearing denied, certiorari denied 114 S.Ct. 58, 510 U.S. 812, 126 L.Ed.2d 28.—*Int Rev* 4529.

Fed.Cl. 2000. Presumption of correctness attaching to assessment by the Internal Revenue Service (IRS) does not apply when the assessment falls within a narrow, but important, category of a "naked assessment" without any foundation; for this purpose, an assessment is "naked" and "beyond saving" when the records supporting the assessment are excluded from evidence, or are nonexistent, so that the basis upon which an assessment is calculated is beyond the knowledge of the court.—*Cook v. U.S.*, 46 Fed.Cl. 110.—*Int Rev* 4556.

NAKED DEFAULT

Iowa 1933. "Naked default" is not substantial right, nor final determination of cause of action, but simply finding by court that plaintiff is entitled to default on record.—*Weinhart v. Meyer*, 247 N.W. 811, 215 Iowa 1317.—*Judgm* 127.

NAKED LAND TRUST

Ill. 1993. Under "Illinois land trust," or "naked land trust," although beneficiaries may retain power to direct or control trustee in dealings as to realty placed in trust, they do not own realty in any conventional sense; beneficiaries' interest is personal property, and trustee holds both legal and equitable title to property in question. Ill.Rev.Stat. 1989, ch. 29, ¶ 8.31.—*Klein v. La Salle Nat. Bank*, 184 Ill.Dec. 420, 613 N.E.2d 737, 155 Ill.2d 201.—*Trusts* 134, 140(1).

NAKED LEGAL TITLE

Tex.Civ.App.—*Texarkana* 1941. Where vendor obligated himself to convey a one-half interest in realty for certain consideration, purchaser had "equitable title" and vendor merely "naked legal title", but the contract was not effective as a "conveyance" being merely an "executory contract of sale", and hence rights of purchaser were inferior to rights of innocent assignee of vendor's mortgage note executed by vendor after contract of sale, and acquired by the assignee after purchase price of realty was paid by purchaser, but before deed was given to purchaser.—*Federal Life Ins. Co. v. Martin*, 157 S.W.2d 149, writ refused.—*Deeds* 6; *Mtg* 261; *Ven & Pur* 54.

NAKED LICENSE

C.A.5 (Tex.) 1997. "Naked license" is trademark licensor's grant of permission to use its mark without attendant provisions to protect quality of goods or services provided under licensed mark.—*Exxon Corp. v. Oxford Clothes, Inc.*, 109 F.3d 1070, rehearing and suggestion for rehearing denied 116 F.3d 1479, certiorari denied 118 S.Ct. 299, 522 U.S. 915, 139 L.Ed.2d 231.—*Trade Reg* 108.1.

C.A.5 (Tex.) 1992. Oral agreement between Compu-Rite Corporation and paper firm whose federally registered trademark for its business forms was "Compurite" and allowing former to use Compurite name, but only in connection with sale of computer printer ribbons, was "consent-to-use," and not "naked license," and thus, paper firm was not barred from enforcing its trademark against others; even if computer ribbons were business forms, such limited use was not necessarily infringing. *Lanham Trade-Mark Act*, § 32, 15 U.S.C.A. § 1114.—*Moore Business Forms, Inc. v. Ryu*, 960 F.2d 486, 118 A.L.R. Fed. 677, rehearing denied.—*Trade Reg* 73.

NAKED LICENSING

C.A.10 (Kan.) 1995. "Naked licensing" of mark occurs when licensor allows licensee to use mark on any quality or type of good licensee chooses; such uncontrolled licensing can cause mark to lose its significance.—*Stanfield v. Osborne Industries, Inc.*, 52 F.3d 867, certiorari denied 116 S.Ct. 314, 516 U.S. 920, 133 L.Ed.2d 217.—*Trade Reg* 108.1.

M.D.Fla. 1996. Under *Lanham Act*, when a service mark owner engages in naked licensing, without any control over the quality of services rendered by licensee, such a practice is inherently

deceptive and constitutes abandonment of any rights to service mark by licensor; "naked licensing" of mark occurs when licensor allows licensee to use mark on any quality or type of good or service licensee chooses.—*CNA Financial Corp. v. Brown*, 922 F.Supp. 567, reconsideration denied 930 F.Supp. 1502, affirmed in part, reversed in part 162 F.3d 1334, affirmed 162 F.3d 1334.—*Trade Reg* 73.

E.D.Mich. 2002. "Naked licensing" of a trademark occurs when a licensor allows a licensee to use the mark on any quality or type of good the licensee chooses.—*Ford Motor Co. v. Lloyd Design Corp.*, 184 F.Supp.2d 665.—*Trade Reg* 108.1.

NAKED OBJECTIONS

Ohio Com.Pl. 1960. Objections of representatives of four churches located within 500 feet of business establishment which had applied for liquor permits, that presence of liquor would be bad influence on young people of church, would be detrimental to churches, and would not benefit community, and that city had enough establishments of that sort, were not mere "naked objections", but conveyed the objection and reasons therefor and constituted "reliable, probative, and substantial evidence" which could support order of Board of Liquor Control denying the permit.—*Stager v. Board of Liquor Control*, 169 N.E.2d 222, 83 Ohio Law Abs. 460.—*Int Liq* 70.

NAKED OR PASSIVE TRUST

Fla. 1940. A trust agreement, providing that trustee held trust realty in stated proportions to named beneficiaries, would not sell or dispose of it without their agreement, would account to them for income or receipts therefrom, had no duties as to payment of taxes thereon or protection thereof from liens or damages, except to hold title for purposes expressed, and would promptly convey property to any transferee as beneficiaries might agree on and request, created mere "naked or passive trust," which was executed by statute of uses, so that beneficiaries were seized of legal estate in realty. *Comp.Gen.Laws* 1927, § 5668 (F.S.A. §§ 689.09, 689.10).—*Elvins v. Seestedt*, 193 So. 54, 141 Fla. 266, 126 A.L.R. 1001.—*Trusts* 131.

NAKED OWNER

La. 1993. "Naked owner" of property has right to alienate his naked interest, but not right to use or enjoy property.—*Campbell v. Pasternack Holding Co., Inc.*, 625 So.2d 477.—*Propty* 1, 11.

NAKED POSSESSION

Tex.Civ.App. 1902. "Naked possession" is the lowest and most imperfect degree of title.—*Birdwell v. Burleson*, 72 S.W. 446, 31 Tex.Civ.App. 31, writ refused.

NAKED POSSESSION WITHOUT COLOR OF TITLE

Tenn.Ct.App. 1937. Where mortgage had been foreclosed and property involved purchased by

mortgagee and a writ of possession was ordered when demanded, and decree had been affirmed by Supreme Court, mortgagor remaining in possession had mere "naked possession without color of title" when the property was conveyed by mortgagee to others, so that the deed was not "champertous."—*Whitson v. Johnson*, 123 S.W.2d 1104, 22 Tenn. App. 427.—*Champ* 7(2).

NAKED POWER

Ala. 1935. "Naked power," which is a power not coupled with an interest, does not authorize person upon whom it is conferred to prosecute action at law or suit in equity.—*Birmingham Trust & Savings Co. v. Marx*, 159 So. 483, 230 Ala. 68.—*Action* 13.

Ky. 1913. Where the language used by testator creates a mere "naked power" of sale—that is, a simple, personal confidence reposed in the trustee—then, in order to pass title, it is necessary for all of the trustees to qualify and to convey; but if the testator has created a power coupled with an interest, then a single trustee, having qualified, may pass perfect title.—*Atzinger v. Berger*, 152 S.W. 971, 151 Ky. 800, 50 L.R.A.N.S. 622.

Mich. 1906. A "naked power," or a power simply collateral and without interest, "is when, to a mere stranger, authority is given of disposing of an interest, in which he had not before, nor hath, by the instrument creating the power, any estate whatever."—*Weaver v. Richards*, 108 N.W. 382, 144 Mich. 395, 6 L.R.A.N.S. 855.

Wash. 1942. Generally, an agent's authority may be revoked by principal at his will at any time, with or without good reason therefor, and authority of such nature is often termed a bare or "naked power".—*Arcweld Mfg. Co. v. Burney*, 121 P.2d 350, 12 Wash.2d 212.—*Princ & A* 33.

NAKED POWER OF ATTORNEY

Ky.App. 1988. "Naked power of attorney," which is one not coupled with interest, terminates upon the death of the principal, notwithstanding the written instrument creating the agency states that it is irrevocable.—*Moore v. Scott*, 759 S.W.2d 827.—*Princ & A* 43(1).

NAKED TRESPASS

Cal.App. 4 Dist. 1939. Good faith confronts any subsequent locator who enters on actual possession of senior locator's land for purpose of initiating claim to the same ground, although senior location be invalid, and when such entry is in bad faith, such intrusion constitutes a "naked trespass."—*Brown v. Murphy*, 97 P.2d 281, 36 Cal.App.2d 171.—*Mines* 27(3).

NAKED TRESPASSER

Cal.App. 4 Dist. 1939. Where defendant in action to quiet title to mining claims was in actual possession and occupancy of property after discovery of mineral, intrusion by plaintiff in bad faith, with full knowledge of such facts and without any right or color of title, constituted him a "naked

trespasser" who was in no position to question defendant's title. Civ.Code, § 1426p.—Brown v. Murphy, 97 P.2d 281, 36 Cal.App.2d 171.—Mines 38(2).

Tex.Civ.App.—Beaumont 1917. In trespass to try title to land, upon which defendant had planted rice crop, defendant held, under evidence, a "naked trespasser," without title to crop or right to have the same on payment of rent.—Pinchback v. Swasey, 194 S.W. 446, writ refused.—Tresp to T T 41(1).

NAKED TRUST

Ala. 1943. A trust is a "naked trust" so as to vest title to the trust estate in the beneficiary rather than in the trustee when the trust is for the use of another without any active duties for the trustee to perform, including any power to be exercised by the trustee as expressed or implied in the trust instrument, but when the purpose of the trust is the preservation of estates for those in remainder, the trust is not a naked trust. Code 1940, Tit. 47, § 144.—Morgan County Nat. Bank of Decatur v. Nelson, 13 So.2d 765, 244 Ala. 374.—Trusts 136.

Ala. 1943. Under will bequeathing one-third of testatrix' residuary estate in trust for the support of a sister-in-law and making a devise over at her death of undisposed of property, trustee was required to provide out of the trust estate for support of the sister-in-law, and was authorized to make sales to that end, and property remaining undisposed of at the sister-in-law's death, was subject to the gift over, and the trust was not a "naked trust" so as to vest title to the trust estate in the sister-in-law. Code 1940, Tit. 47, § 144.—Morgan County Nat. Bank of Decatur v. Nelson, 13 So.2d 765, 244 Ala. 374.—Trusts 136.

NAKED TRUSTEE

S.D.N.Y. 1991. Senior indenture trustee was not "naked trustee," and, thus, its citizenship, not that of senior noteholders, determined diversity jurisdiction, even if noteholders consented to trustee's actions and trustee collected funds for benefit of noteholders; indentures authorized trustee to accelerate notes, pursue remedies at law and equity, and recover in its own name as trustee, and indentures imposed requirements on noteholders before they could sue on their own behalf.—Fleet Nat. Bank v. Trans World Airlines, Inc., 767 F.Supp. 510.—Fed Cts 290.1.

S.D.N.Y. 1991. Bank was "trustee" of airline's sale/leaseback of aircraft and equipment, rather than being "naked trustee," and thus bank could bring action for return of property upon airline's default; bank owned property and thus had obvious interest in seeking its return, remedy bank sought was specifically provided for in agreement between bank and airline, and bank would be breaching its fiduciary duties as trustee if it did not seek return of property.—Connecticut Nat. Bank v. Trans World Airlines, Inc., 762 F.Supp. 76.—Aviation 14.

Wyo. 1941. A holder of second mortgage, after he had been paid in full, would be similar to a

"naked trustee" and would have same right which he had before mortgage was paid off to acquire a title to property which was independent of the title which he held as naked trustee.—Carpenter & Carpenter v. Kingham, 109 P.2d 463, 56 Wyo. 314, opinion modified on denial of rehearing 110 P.2d 824, 56 Wyo. 314.—Mtg 144.

NAME

C.A.4 (S.C.) 1963. "Name," as used in South Carolina statute making it a misdemeanor to publish name of a person raped, is the equivalent of identity, and a television broadcast which sufficiently identified rape victims other than by name transgressed the statute and trespassed on their privilege of privacy, and in view of such statute, an action for invasion of right of privacy could be maintained by victims even though the matter was of public concern and record. Code S.C. 1962, § 16-81.—Nappier v. Jefferson Standard Life Ins. Co., 322 F.2d 502.—Tel 439; Torts 8.5(6).

Cust. & Pat.App. 1942. The "name" clause of Trade-Mark Act has two distinct applications, in that there are situations in which a person or corporation may not register his or its name as a technical trade-mark for his or its own use, and a person or corporation is not entitled to appropriate and register the name of another person or corporation, or an imitation or simulation thereof, for use as a technical trade-mark when it would likely result in confusion as to the origin of the goods to which it is proposed to apply such mark. Trade-Mark Act of 1905, § 5(b), 15 U.S.C.A. § 85(b).—Kroll Bros. Co. v. Rolls-Royce, 126 F.2d 495, 29 C.C.P.A. 897.—Trade Reg 157.

D.D.C. 1986. Federal Election Commission's interpretation of statute, prohibiting any political committee which was not an authorized committee from using the name of any candidate in the committee's name, as not applying to projects which did not constitute separate political committees, defeated plain meaning of statute; the "name" of the committee was not simply that which was registered officially in the records out of public view, but included name presented to the public. Federal Election Campaign Act of 1971, § 302(e)(4), as amended, 2 U.S.C.A. § 432(e)(4).—Common Cause v. Federal Election Com'n, 655 F.Supp. 619, reversed 842 F.2d 436, 268 U.S.App.D.C. 440.—Elections 317.

S.D.Fla. 1970. Similarity between plaintiff's "registered mark" "Casual Corner" used in connection with retail sales of women's apparel, and "name" of defendant's mercantile retail establishment "Corner Casuals" was not such as was likely to create confusion, where, among other things, plaintiff and defendant did not compete in same market place, and defendant did not use lettering similar to that used by plaintiff and did not label any of her merchandise. Lanham Trade-Mark Act, §§ 1-45, 15 U.S.C.A. §§ 1051-1127.—Casual Corner Associates, Inc. v. Weinell, 309 F.Supp. 705.—Trade Reg 367.

S.D.N.Y. 1954. A “name” is the title by which a person or thing is known or designated; a distinctive specific appellation, whether of an individual or a class.—*Baez v. Disabled Am Veterans Service Foundation*, 119 F.Supp. 490.

E.D.S.C. 1963. A person’s “name” consists of one or more Christian or given names and one surname.—*Nappier v. Jefferson Standard Life Ins. Co.*, 213 F.Supp. 174, reversed 322 F.2d 502.—Names 2.

Ala. 1942. The true “name” of an accused is any name by which the accused is commonly known or called.—*Ward v. State*, 6 So.2d 394, 242 Ala. 307.—Ind & Inf 81(2).

Ga. 1996. Failure of superintendent of elections to place city council candidate’s nickname on ballot was not misconduct providing basis for election contest; statute merely required that “names” of candidates be placed on ballot, word “name” has been defined to mean designation used to distinguish one individual from others, while “nickname” has distinct meaning as representing familiar, humorous, or derogatory name added to or replacing proper name, and Supreme Court would thus hesitate to conclude that legislature’s use of term “names” included “nicknames.” O.C.G.A. §§ 21-3-225, 21-3-422(1).—*Maye v. Pundt*, 477 S.E.2d 119, 267 Ga. 243.—Elections 271.

Ga.App. 1962. A “name” is the word or combination of words by which a person is distinguished from other individuals, and consists of a given or Christian name and a family surname, and does not include the prefix “Mr.”—*Weathers v. Modern Masonry Materials, Inc.*, 129 S.E.2d 65, 107 Ga.App. 34.—Names 2, 4.

Ill. 1911. An indictment for rape on an illegitimate child, whose mother married when the child was three years old, which gives as the surname of the child the surname of the husband of the mother, is sufficiently supported by proof that after the marriage the child was generally known by such name; a bastard not necessarily bearing its mother’s name; a “name” being one or more words to designate a person or thing.—*People v. Gray*, 96 N.E. 268, 251 Ill. 431.—Ind & Inf 180.

Ill.App. 4 Dist. 1968. “Name” within statute providing that names of all candidates to be voted for in each election district should be printed on one ballot should be given its usual sense and ordinary meaning unless it has become a word of art or has been given other accepted meaning; it ordinarily means the distinctive designation of a person or thing which does not include other descriptive terminology. S.H.A. ch. 46, § 16-3.—*People ex rel. Richter v. Telford*, 242 N.E.2d 464, 103 Ill.App.2d 132.—Elections 172.

Ill.App. 4 Dist. 1968. In view of fact that Election Code had provided that not only the name but “the name and description” of candidate should be printed on the ballot, and that the words “and description” were deleted by 1955 Amendment, the word “Dr.” and the letters “O.D.” as applied to candidate for county coroner would constitute “de-

scription”, not “name”, and should not be printed on the official ballot. S.H.A. ch. 46, § 7-60.—*People ex rel. Richter v. Telford*, 242 N.E.2d 464, 103 Ill.App.2d 132.—Elections 172.

Iowa 1914. A person’s “name” is the mark or indicium by which he is distinguished from other individuals. By universal practice or custom, the designation is composed of the Christian or given name and the surname.—*Riley v. Litchfield*, 150 N.W. 81, 168 Iowa 187, Am. Ann. Cas. 1917B, 172.

Kan. 1956. A man’s “name” is the designation by which he is distinctively known in the community.—*Sanders v. Sitton*, 292 P.2d 1099, 179 Kan. 118.—Names 2.

Kan. 1916. A man’s “name” is the designation by which he is distinctively known in a community.—*Badger Lumber Co. v. Collinson*, 156 P. 724, 97 Kan. 791.

La. 1963. “Name” is word or words used to distinguish person or thing or class from others.—*Wilty v. Jefferson Parish Democratic Executive Committee*, 157 So.2d 718, 245 La. 145.—Names 2.

Md. 1940. In reference to persons a “name” is the designation or appellation used to distinguish one person from another.—*Romans v. State*, 16 A.2d 642, 178 Md. 588, certiorari denied 61 S.Ct. 732, 312 U.S. 695, 85 L.Ed. 1131.—Names 2.

Mass. 1935. The “name” of a person is the distinctive characterization in words by which he is known and distinguished from others, and description is not the equivalent of a “name.”—*Putnam v. Bessom*, 197 N.E. 147, 291 Mass. 217.—Names 2.

Mass. 1935. The middle name or initial is a part of the “name” of a person.—*Putnam v. Bessom*, 197 N.E. 147, 291 Mass. 217.—Names 3, 6.

Mass. 1935. Abbreviation is not the equivalent of a “name.”—*Putnam v. Bessom*, 197 N.E. 147, 291 Mass. 217.—Names 5.

Mass. 1932. Initials are not a “name.”—*Sweeney v. Morey & Co.*, 181 N.E. 782, 279 Mass. 495.—Names 6.

Mass. 1930. Middle name or initial of person constitutes a part of the “name.”—*Com. v. Snow*, 169 N.E. 542, 269 Mass. 598, 68 A.L.R. 920.

Mass. 1926. “Name” of a person is distinctive characterization in word or words and initials by which he is known or distinguished from others.—*O’Brien v. Board of Election Com’rs of City of Boston*, 153 N.E. 553, 257 Mass. 332.—Names 2.

Minn. 1943. A person’s “name” consists of his given name and his surname, and, where a voter writes the surname of a candidate with a given name other than that of the candidate, he has not written the candidate’s name, and the ballot should not be counted. Minn.St.1941, §§ 206.16(3), 206.50(5).—*Murray v. Floyd*, 11 N.W.2d 780, 216 Minn. 69.—Elections 180(6).

Miss. 1938. A person’s “name” consists of one or more Christian or given names and one surname

or family name.—*Blakeney v. Smith*, 183 So. 920, 183 Miss. 151.—Names 2.

Mo. 1941. The word “name” as used in statutes with reference to assessment of personal property should be taken in its plain, ordinary and usual sense. V.A.M.S. §§ 1.020 et seq., 80.010.—*State ex rel. Lane v. Corneli*, 149 S.W.2d 815, 347 Mo. 932.—Tax 414.

Mo. 1941. A person’s “name” is the designation ordinarily used and by which he or she is known in the community, and whether identification by use of a name is sufficient is ordinarily a question of fact.—*State ex rel. Lane v. Corneli*, 149 S.W.2d 815, 347 Mo. 932.—Names 2, 19.

Mo.App. 1964. A person’s “name” is designation by which he is commonly known and the one by which he knows himself and others call him.—*State ex rel. Rainey v. Crowe*, 382 S.W.2d 38.—Names 2.

Mo.App. 1964. The letters “M.D.” were descriptive and were not equivalent of “name” or “part of name” of candidate for office of coroner within statute requiring county clerk to publish names of candidates and that names of candidates should be on official and sample ballots. Sections 111.420, 120.390, 120.420, 120.441, 120.450 RSMo 1959, V.A.M.S.—*State ex rel. Rainey v. Crowe*, 382 S.W.2d 38.—Elections 172.

Neb. 1905. A “name” is a word or words, designation, or appellation used to distinguish a person or thing or class from others, and words indicated by single letters are only less adapted to that purpose than words indicated by several letters.—*Griffith v. Bonawitz*, 103 N.W. 327, 73 Neb. 622.

N.J.Super.A.D. 2001. Term “name” consists of one or more Christian or given names and one surname or family name, and it is the distinctive characterization in words by which one is known and distinguished from others, and description, or abbreviation, is not the equivalent of a “name” as that term is used in election law providing that there shall be a single or blanket form of ballot, upon which shall be printed the names of all the candidates of every party or group of petitioners having candidates to be voted for at such election. N.J.S.A. 19:14–2.—*Sooy v. Gill*, 774 A.2d 635, 340 N.J.Super. 401.—Elections 172.

N.J.Sup. 1948. At common law, a legal “name” consisted of a given name and of a surname or family name.—*In re Conde*, 61 A.2d 198, 137 N.J.L. 589.—Names 2.

N.J.Sup. 1892. “Title” is not synonymous with the word “name” in the new election law, providing that the nominees of each party shall be printed on separate tickets, underneath the name or title of the party making the nomination.—*State v. Black*, 24 A. 489, 54 N.J.L. 446, 25 Vroom 446, 16 L.R.A. 769, affirmed *Ransom v. Black*, 51 A. 1109, 65 N.J.L. 688, 36 Vroom 688.

N.M.App. 1997. “Name” is not synonymous with “identity” in statute making it an offense to conceal one’s true name or identity, and giving of

name does not preclude finding of violation of statute. NMSA 1978, § 30–22–3.—*State v. Andrews*, 934 P.2d 289, 123 N.M. 95, 1997-NMCA-017, certiorari denied 932 P.2d 498, 122 N.M. 808.—False Pers 1.

N.Y.A.D. 2 Dept. 1977. Word “name” as used in statute making it a misdemeanor to use a living person’s name for commercial purposes without his written consent is not equable to the word “reputation”; likewise, statutory word “picture” is not equable to the words “mental image or a likeness.” Civil Rights Law §§ 50, 51.—*Lombardo v. Doyle, Dane & Bernbach, Inc.*, 396 N.Y.S.2d 661, 58 A.D.2d 620.—Torts 8.5(6).

N.Y.Sup. 1947. Complaint for damages under the Civil Rights Law and for injunction restraining defendant from using on its wine labels plaintiff’s surname “Orsini” in conjunction with plaintiff’s coat of arms sufficiently alleged that use of coat of arms and surname identified “name” of plaintiff in mind of the public, as against contention that identification was insufficient in that there was merely the use of a surname without the full name. Civil Rights Law, § 51.—*Orsini v. Eastern Wine Corp.*, 73 N.Y.S.2d 426, 190 Misc. 235, affirmed 78 N.Y.S.2d 224, 273 A.D. 947, appeal denied 79 N.Y.S.2d 870, 273 A.D. 996.—Inj 118(2); Torts 26(1).

N.Y.Sup. 1932. “Name” is designation by which one is distinctively known in community.—*In re Cohen*, 255 N.Y.S. 616, 142 Misc. 852.—Names 9.

N.Y.City Civ.Ct. 1967. A “name” is a word or a combination of words by which an individual is known or designated.—*Application of Green*, 283 N.Y.S.2d 242, 54 Misc.2d 606.—Names 2.

N.Y.Sp.Sess. 1916. A physician, advertising to practice medicine under the name “Russian Medical Help,” is advertising to practice under a name other than his own, contrary to Public Health Law, § 174, since “name,” as ordinarily used, means the form of designation of a class or an individual in speech or writing, and is not used in that section in its restricted legal meaning of the two words called, respectively, the Christian name, and surname, which constitute the ordinary designation of an individual.—*People v. Wilkes*, 163 N.Y.S. 659.

N.Y.Mag.Ct. 1954. The word “name” as used in statute prohibiting uses for advertising purposes or for purposes of trade, of the “name” of any living person without having first obtained the written consent of such person, means a person’s full name and not merely his surname, unless the surname as used is associated with some identifying material which unmistakably identifies the complainant or the surname standing alone has been so used by the complainant as to be well known to the public as identifying the complainant. Civil Rights Law, § 50.—*People on Complaint of Maggio v. Charles Scribner’s Sons*, 130 N.Y.S.2d 514, 205 Misc. 818.—Names 21.

Ohio Com.Pl. 1953. One’s “name” usually consists of at least a given or first name and a surname or family name which, merely as matter of custom,

is passed along from father to his children, and when his daughters marry, by custom each assumes the surname of her husband.—*Kay v. Kay*, 112 N.E.2d 562, 51 O.O. 434, 65 Ohio Law Abs. 472.—*Hus & W 1*; *Names 2*.

Okla. 1916. A man's "name" is the mark of indicium by which he is designated from other men.—*Bacon v. Dawson*, 157 P. 1033, 53 Okla. 689, 1916 OK 569.

Pa. 1948. The sole function of a "name" is to identify the person whom it is intended to designate.—Department of Public Assistance of Com. of Pa. v. *Reustle*, 56 A.2d 221, 358 Pa. 111.

S.C. 1978. Within statute providing that candidate's "name" shall be placed on ballot, "name" is not limited to candidate's Christian or given name, and derivative of one's given name, properly acquired under common law and used in good faith for honest purposes, and which is not merely a nickname bearing no relation to person's given name, is not proscribed. Code 1976, § 7-13-320.—*Stevenson v. Ellisor*, 243 S.E.2d 445, 270 S.C. 560.—*Elections 172*.

S.C. 1908. The word "name" is defined as "a word by which a person or thing is denoted; the word or words by which an individual, person, or thing, or class of persons or things, is designated and distinguished from others."—*Koth v. Pallachucola Club*, 61 S.E. 77, 79 S.C. 514.—*Names 2*.

NAME AN ORIGINAL BENEFICIARY

Del.Ch. 1939. In fraternal association's by-law restricting right to name beneficiaries to persons having designated relationships to member, and providing that upon member's failure to "name an original beneficiary" death benefits should be payable to intestate distributees, the quoted phrase meant a naming in the exercise of and in conformity with the privilege specifically granted, and hence member's naming of an unqualified person as beneficiary did not preclude payment of benefits to intestate distributees.—*Electrical Workers Ben. Ass'n v. Derrickson*, 8 A.2d 509, 24 Del.Ch. 201.—*Insurance 3467*.

NAMED

Ala. 1914. Laws 1909, Sp.Sess., p. 188, authorizing elections for the issuance of bonds for purposes "named," and enumerating the purposes for which bonds may be issued, does not authorize the issuance of bonds for a municipal auditorium and the acquisition of a necessary site therefor; the word "named" meaning specified.—*Colvin v. Ward*, 66 So. 98, 189 Ala. 198.

Ga.App. 2002. Only those parties named in a release will be discharged by the release instrument, and "named" means identified either by proper name or such other description as leaves no question of the identity of the party released.—*Moon v. Mercury Ins. Co. of Georgia*, 559 S.E.2d 532, 253 Ga.App. 506.—*Release 27*.

Ga.App. 2000. Only non-parties named in a release agreement are released from liability for a

harm, and parties not named in a release are not discharged from liability, and being "named" means to be identified either by proper name or such other description as leaves no question of the identity of the party released.—*Kinard v. Worldcom, Inc.*, 536 S.E.2d 536, 244 Ga.App. 614.—*Release 27*.

N.J.Sup. 1888. As used in the charter of the city of Trenton, providing "that the common council at the regular meeting on the third Monday in April shall, by votes, appoint a city clerk" and certain other specified officers, "and shall from time to time appoint such other subordinate officers as they shall deem necessary," and providing that "the officers above named shall hold their offices for one year, unless sooner removed, and until their successors shall be appointed and qualified," the term "named" does not refer to or include the subordinate officers, but only such officers as were named by the title of the office.—*State v. Inhabitants of the City of Trenton*, 14 A. 578, 50 N.J.L. 338, 21 Vroom 338.

Or.App. 1998. Even assuming that Administrative Procedures Act (APA) provision, defining "party" as someone "named" by the agency as a party, applied to water rights proceedings, nonprofit environmental group that filed petition with Water Resources Department for reconsideration of Department's order in non-contested case extending time for water rights holder to develop and irrigate state-owned land was not "named" as party to the water rights proceeding, though Department accepted the petition before eventually denying it and environmental group therefore claimed it had been implicitly named as party, and thus, environmental group was not a "party" with statutory standing to seek judicial review of Department's order. ORS 183.310(6)(b), 536.075(1).—*Waterwatch of Oregon, Inc. v. Boeing Agri-Industrial Co.*, 963 P.2d 744, 155 Or.App. 381.—*Waters 152(12)*.

Pa. 1927. Children of deceased beneficiary taking her share under codicil held beneficiaries within codicil devising remainder to all beneficiaries "named" in will (Wills Act 1917, § 15[b], being Pa. St. 1920, § 8324). Where codicil to will provided for distribution of remainder to all beneficiaries named in will, children of deceased's sister designated by codicil as taking her share held within beneficiaries included therein; "named" being a word of various meanings and as so used including all beneficiaries designated in will, particularly since, under Wills Act June 7, 1917, § 15(b) (P. L. 408; Pa. St. 1920, § 8324), gift to mother named in original will would inure to benefit of children after her death, since testator died without leaving lineal descendants.—*In re Packer's Estate*, 139 A. 868, 291 Pa. 198.—*Wills 466*.

Pa. 1927. Children of deceased beneficiary taking her share under codicil held beneficiaries within codicil devising remainder to all beneficiaries "named" in will. Wills Act 1917, § 15[b], being 20 P.S. § 180.14.—*In re Packer's Estate*, 139 A. 868, 291 Pa. 198.—*Wills 466*.

Wis. 1937. Under liability policy providing that the unqualified term "assured," wherever used, should include any other person entitled to protection thereunder, but that qualified term "named assured" should apply only to the person, firm, or corporation named and described as such therein, the term "assured" referred in every instance to the "named assured," but, when qualified by the word "named," applied solely to him.—*Madison v. Steller*, 275 N.W. 703, 226 Wis. 86.—Insurance 2660.

NAMED AS A PARTY PLAINTIFF

C.A.9 (Guam) 1982. Individual was "named as a party plaintiff," thus commencing suit for purposes of the limitations period of the Fair Labor Standards Act, not when interrogatories were filed naming him as plaintiff, but rather when pretrial order was filed, which order superceded pleadings and controlled subsequent course of action. Fed. Rules Civ.Proc. Rule 16, 28 U.S.C.A.; Fair Labor Standards Act of 1938, § 16(c), 29 U.S.C.A. § 216(c).—*Donovan v. Crisostomo*, 689 F.2d 869, 25 Wage & Hour Cas. (BNA) 1238.—Labor 1480.

NAMED AS PARTIES PLAINTIFF

C.A.2 (N.Y.) 1949. Under complaint to recover under Fair Labor Standards Act alleging that plaintiff was suing in his own behalf and as agent and representative of employees named therein and similarly situated, that plaintiff had been authorized by such employees to institute action in their behalf, and setting forth activities performed by each, employees on whose behalf action was brought were specifically "named as parties plaintiff" within meaning of Portal-to-Portal Act, even though their names were not set forth in title to action, and hence it was unnecessary to file written consents by them to become parties plaintiff. Fair Labor Standards Act of 1938, §§ 1 et seq., as amended, 16(b), as amended by Portal-to-Portal Act of 1947, § 5(a), 29 U.S.C.A. §§ 201 et seq., 216(b); Portal-to-Portal Act of 1947, §§ 1 et seq., 6(b), 8, 29 U.S.C.A. §§ 251 et seq., 255(b), 257.—*Gibbons v. Equitable Life Assur. Soc. of U.S.*, 173 F.2d 337.—Fed Civ Proc 184.5.

NAMED ASSURED

N.Y.Mun.Ct. 1939. The qualified term "named assured" applies only to the assured named in the policy.—*Fertig v. General Acc. Fire & Life Assur. Corp.*, Limited, of Perth, Scotland, 13 N.Y.S.2d 872, 171 Misc. 921.—Insurance 2660.

Okla. 1939. Where automobile indemnity policy insured owner "and/or" another "and/or" a corporation, owner was a "named assured," so as to extend coverage under omnibus clause to third person using automobile with owner's permission.—*Lloyds America v. Tinkelpaugh*, 88 P.2d 356, 184 Okla. 413, 1939 OK 135.—Insurance 2666.

Wis. 1935. Under automobile indemnity policy insuring truck operator "and/or" his employer as the "named assured" and excluding from coverage accidents to employees of assured arising out of and in usual course of business, insurer held liable for injury to employee of truck operator's employer

from operation of truck while operator was operating as independent contractor, as against contention that word "assured" in exclusion clause of policy referred to both truck operator and employer (St. 1933, § 204.30).—*Employers' Mut. Liability Ins. Co. of Wisconsin v. Tollefsen*, 263 N.W. 376, 219 Wis. 434.—Insurance 2748(1).

Wis. 1935. Under automobile indemnity policy insuring truck operator "and/or" his employer as the "named assured," insurer held not relieved of liability for injuries to employee of truck operator's employer from operation of truck because of contract requiring operator to carry insurance on trucks, protecting both operator and employer against damages to pedestrians and travelers on the highway, where insurer was not a party to the contract and contract was not made for its benefit (St.1933, § 204.30).—*Employers' Mut. Liability Ins. Co. of Wisconsin v. Tollefsen*, 263 N.W. 376, 219 Wis. 434.—Insurance 2748(1).

Wis. 1935. Under automobile indemnity policy insuring truck operator "and/or" his employer as the "named assured," insurer held not relieved from liability for injury to employee of truck operator's employer from operation of truck by operator as independent contractor because of clause exempting insurer from liability for injuries for which assured might be liable under Workmen's Compensation Act, since truck operator sustained no liability to employee under the Compensation Act, in that truck operator was the "assured". St.1933, § 204.30(3) (W.S.A.)—*Employers' Mut. Liability Ins. Co. of Wisconsin v. Tollefsen*, 263 N.W. 376, 219 Wis. 434.—Insurance 2748(1).

NAMED BANDS

D.Neb. 1945. The characteristics of "named orchestras" or "named bands", and fact that they are numerous throughout the country, are common knowledge.—*Nebraska Nat. Hotel Co. v. O'Malley*, 63 F.Supp. 26, certiorari denied 67 S.Ct. 868, 330 U.S. 827, 91 L.Ed. 1277, appeal dismissed 163 F.2d 1019.—Evid 20(1).

NAMED BENEFICIARY

Fla. 1973. Statute permitting an insured or named beneficiary who recovers against the insurer under policy to recover attorneys' fees was not intended to benefit party injured by an insured automobile, and injured party who successfully sued both the insured and the insurer was not a "named beneficiary" under statute and could not recover attorneys' fees thereunder in case in which question of coverage was not in issue. F.S.A. § 627.428.—*Wilder v. Wright*, 278 So.2d 1.—Insurance 3357.

Fla.App.3 Dist. 1993. Borrower, whose failure to insure property financed by lender resulted in lender's purchase of collateral protection insurance policy, was not a "named insured," "omnibus insured," or "named beneficiary" of that policy within meaning of attorney's fee statute, and was not entitled to recover attorney's fees after prevailing in action against insurer for policy proceeds; borrower was not designated as insured under policy, and policy did not encompass any person or entity other

than lender as "insured," and did not name any beneficiaries. West's F.S.A. §§ 627.428, 627.428(1).—*Romero v. Progressive Southeastern Ins. Co.*, 629 So.2d 286.—Insurance 3365.

NAMED DEFENDANT

Ill. 1995. Fictitious "John Doe" may not be considered "named defendant" under respondent-in-discovery statute, and plaintiff who has sued only fictitious defendants may not designate respondents in discovery or convert such named parties to defendants; statutory phrase allowing plaintiff to designate respondents in discovery "other than the named defendants" presupposes that plaintiff has commenced action against identifiable, real person or entity. S.H.A. 735 ILCS 5/2-402.—*Bogseth v. Emanuel*, 211 Ill.Dec. 505, 655 N.E.2d 888, 166 Ill.2d 507, rehearing denied.—Parties 73.

Tex.App.—Corpus Christi 1981. For purposes of statute providing that all claims for contribution between the named defendants in the primary suit shall be determined in the primary suit except that a named defendant may proceed against a person who is not party to the primary suit and who has not affected a settlement with that claimant, the terms "claimant" and "defendant" mean that a third-party defendant becomes a "named defendant" when the claim for contribution is filed against him by the claimant. Vernon's Ann.Civ.St. Art. 2212a, § 2(g).—*UMC, Inc. v. Arthur Bros., Inc.*, 626 S.W.2d 819, ref. n.r.e. *Arthur Bros., Inc. v. U.M.C., Inc.*, 647 S.W.2d 244.—Venue 22(10).

NAMED DEFENDANT IN THE PRIMARY SUIT

Tex. 1982. For purpose of venue statute providing that all contribution claims between named defendants in the primary suit shall be determined in the primary suit, the defendant in third-party claim for contribution and indemnity became a "named defendant in the primary suit" when contribution claim was filed against it in Nueces County suit and venue of that claim remained in Nueces County, notwithstanding that when the third-party defendant was made a named defendant in amended petition the trial court sustained its plea of privilege and transferred all claims against it to Kleberg County. Vernon's Ann.Civ.St. art. 2212a, § 2(g).—*Arthur Bros., Inc. v. U.M.C., Inc.*, 647 S.W.2d 244.—Venue 22(10).

NAMED DEFENDANTS

Tex.App.—San Antonio 1984. Contractors became "named defendants" when architect named as a defendant in third-party complaint for negligence filed a cross claim against contractors for indemnification or contribution, and since contractors' liability to architect in cross action hinged upon architect's liability, if any, to owner as third-party plaintiff, "primary suit," for purposes of cross action, was suit pending on owner's third-party claim against architect, so that proper venue was Kerr County as place of owner's residence, and pleas of privilege filed by contractors to be sued in Bexar County as place of their residence should not have been granted. Vernon's Ann.Texas Civ.St.

art. 2212a, § 2(g); art. 1995, subd. 9a (Repealed).—*Bohnert v. Barbour*, 679 S.W.2d 700.—Venue 22(10).

NAMED DRIVER EXCLUSION

E.D.Pa. 1997. Pennsylvania law allows insurance policies to exclude specific persons from coverage if they are driving insured motor vehicle when it is involved in accident, and such an exclusion is referred to as a "named driver exclusion." 75 Pa.C.S.A. § 1718(c).—*State Farm Fire and Cas. Co. v. Keenan*, 953 F.Supp. 103.—Insurance 2660.

NAMED FIDUCIARY

N.D.Ala. 1986. Corporation which contracted with employer to design and install qualified medical benefit plan to provide sickness and accident benefits to eligible employees was "named fiduciary" under employee benefit plan where it assumed fiduciary duties and thus owed fiduciary duty to employees. Employee Retirement Income Security Act of 1974, § 402(a)(1), (a)(2)(A), 29 U.S.C.A. § 1102(a)(1), (a)(2)(A).—*McNeese v. Health Plan Marketing, Inc.*, 647 F.Supp. 981.—Pensions 44.

D.D.C. 1987. Sponsor of master pension plan was "fiduciary" under Employee Retirement Income Security Act, as it was "named fiduciary" pursuant to terms of plan instrument, and, in its roll as sole source of annuity contracts for plan, exercised discretion by determining amount of "excess interest" paid on plan's annuity contracts. Employee Retirement Income Security Act of 1974, § 402(a), 29 U.S.C.A. § 1102(a).—*Arakelian v. National Western Life Ins. Co.*, 680 F.Supp. 400, reconsideration denied 724 F.Supp. 1033.—Pensions 44.

W.D.Pa. 1983. A "named fiduciary" and "trustee" were both "fiduciaries" as defined under Employee Retirement Income Security Act, with one exception not applicable to case at bar, and standard of review for trustee was applicable to "named fiduciary." Employee Retirement Income Security Act of 1974, §§ 3(21)(A), 402(a)(1, 2), 403(a), 29 U.S.C.A. §§ 1002(21)(A), 1102(a)(1, 2), 1103(a).—*Czyz v. General Pension Bd., Bethlehem Steel Corp.*, 578 F.Supp. 126.—Pensions 44.

NAMED HEREIN AS EXECUTOR AND TRUSTEE

N.Y.Sur. 1955. Where codicil of will conditioned legacy to certain foundation on fulfillment of requirements that foundation be reorganized and its charter and by-laws be amended to provide for management of its business affairs by certain bank, "named herein as executor and trustee," the quoted words were not an indication of an intent to limit the required revisions of the charter to that period of time the bank was trustee for widow, but were merely descriptive of the corporate fiduciary.—*In re Atran's Estate*, 145 N.Y.S.2d 540.—Char 38.

NAMED IN SEQUENCE

Fla.App. 1 Dist. 1977. Under statute providing that each member of retirement system may design-

nate choice of one or more beneficiaries, "named in sequence," to receive benefits, if any, which may be payable in the event of member's death, the phrase "named in sequence" means that first-named beneficiary, if living, is entitled to all of the proceeds and that if that beneficiary predeceases member or waives benefit, second-named beneficiary would then become eligible, and so forth. West's F.S.A. § 121.091(8).—Austin v. Austin, 350 So.2d 102, certiorari denied 357 So.2d 184.—States 64.1(5).

NAMED * * * INSURED

C.A.8 (Mo.) 2001. Wife of insured under automobile policy which had been issued to insured, "d/b/a" corporation of which he was principal, was not a "named insured" under policy, so that wife did not come within exception to policy's exclusion from underinsured motorist (UIM) coverage for bodily injury sustained by insured or any family member while in a non-covered vehicle, under which exclusion did not apply to a named insured.—Yarbrough v. American States Preferred Ins. Co., 2 Fed.Appx. 665.—Insurance 2661.

C.A.10 (Okla.) 1968. Under family automobile policy in which only person listed in block for setting out named insured was husband, and defining named insured as individual named in block and also his spouse if resident of same household, fact that wife was listed in block referring to policy period did not in view of divorce of named insured and wife and wife's separation from household, make wife "named insured" under policy.—Agee v. Travelers Indem. Co., 396 F.2d 57.—Insurance 2661.

C.A.1 (Puerto Rico) 1997. Corporation in which named insured owned 20% of stock was not "named insured" within meaning of endorsement to comprehensive general liability (CGL) insurance policy defining "named insured" to include associated, affiliated, newly acquired, or controlled corporation or company over which named insured maintained an ownership of majority interest; owning 20% of the shares was neither ownership nor majority interest.—Fireman's Fund Ins. Companies v. American Intern. Ins. Co. of Puerto Rico, Inc., 109 F.3d 41.—Insurance 2272.

M.D.Fla. 1992. Driver living with her parents was not "named insured" under their policy within meaning of Florida statute requiring notice to be given to named insured if policy contained certain limitations on uninsured motorist provisions. West's F.S.A. § 627.727(9).—DeLuna v. Valiant Ins. Co., 792 F.Supp. 790.—Insurance 2774.

M.D.Ga. 1957. The "named insured" within meaning of automobile liability policy was the person named therein as insured, and his minor son, though a member of his household and an insured under terms of policy, was not the named insured.—American Indem. Co. v. Davis, 155 F.Supp. 47, cause remanded 260 F.2d 440.—Insurance 2661.

S.D.Miss. 1998. Under Mississippi law, "named insured" in automobile policy issued to business includes all of the agents, servants, and employees of the business or corporation while in the course

and scope of their employment; business entity can act only through its principals, agents or employees and is incapable of driving an automobile itself.—Crane v. Liberty Mut. Ins. Co., 19 F.Supp.2d 654.—Insurance 2660.

D.N.J. 1942. The words "named insured" as used in automobile liability policy extending coverage only to named insured and those in privity with him refer to the person to whom the policy was issued, and preclude extension of indemnification by implication or otherwise to any other person.—Trinity Universal Ins. Co. v. Woody, 47 F.Supp. 327.—Insurance 2660.

S.D.N.Y. 1999. "Named insured" under rental car company's self-insurance policy was rental company, not rental car customer, and company was thus not obligated under Virginia omnibus statute to provide primary liability coverage to driver who received permission from customer, but not company, which had expressly limited use of car to customer. Va.Code 1950, § 38.2-2204, subd. A.—Integon Nat. Ins. Co. v. Welcome Corp., 53 F.Supp.2d 599.—Insurance 2666.

W.D.Okla. 1967. Under family automobile policy in which husband was designated "named insured" with two named "owned automobiles", where wife was awarded one of named owned automobiles in divorce case and thereafter traded automobile for new automobile and wife was killed while riding in automobile substituted by dealer for new automobile and operated by judgment debtor, neither judgment debtor nor wife was "relative" of named insured and neither was person insured under policy when accident occurred.—Agee v. Travelers Indem. Co., 264 F.Supp. 322, affirmed 396 F.2d 57.—Insurance 2661.

E.D.Pa. 1991. Automobile policy unambiguously stated that husband, rather than husband's business, was "named insured," thereby imparting reasonable expectation that wife was also class one insured, and thereby entitling wife to stack uninsured motorist coverage under policy; if insurer intended to list business as named insured, it could have written "[husband] Plumbing & Heating" without placing mark before "Plumbing & Heating," and designation below and to right of name and mailing address read "STATUS OF INSURED: INDIVIDUAL." 75 Pa.C.S.A. § 1736.—Federal Kemper Ins. Co. v. Sosdorf, 770 F.Supp. 264.—Insurance 2799.

E.D.Pa. 1989. Taxicab company's leased driver was not a "named insured" within policy covering company's taxicabs even though policy defined "named insured" as the company or other individuals trading under its name or operating under its authority, where including leased driver as "named insured" would be inconsistent with other provisions of the policy.—Guaranty Nat. Ins. Co. v. Chester County Housing Authority, 714 F.Supp. 747.—Insurance 2891.

S.D.W.Va. 1964. Under West Virginia law, "named insured" in automobile liability policy will not apply to persons other than those named in

policy.—*Travelers Indem. Co. v. American Cas. Co. of Reading, Pa.*, 226 F.Supp. 354.—Insurance 2660.

Ala. 1969. Blood relationship between deceased passenger and “insured” was established under provisions of automobile policy excluding coverage for any member of family of insured residing in same household, where passenger’s sister, at time of accident, was spouse of “named insured,” who was driver of automobile, and, under terms of policy, wife was just as much an “insured” as was the “named insured.”—*Blow v. State Farm Mut. Auto. Ins. Co.*, 228 So.2d 4, 284 Ala. 687.—Insurance 2747.

Ariz.App. Div. 1 1994. As used in insurance statutes, “named insured” is person whose name appears on declarations page of insurance policy, but “insured” is any person covered by insurance policy, including named insured. A.R.S. § 20-259.01.—*State Farm Mut. Auto. Ins. Co. v. Lindsey*, 885 P.2d 144, 180 Ariz. 456, review granted, opinion vacated 897 P.2d 631, 182 Ariz. 329.—Insurance 1825.

Colo. 1980. “Named insured” under automobile liability policy is party who contracts for insurance and whose background and driving experience determines premium which must be paid for policy.—*Mid-Century Ins. Co. v. Liljestrand*, 620 P.2d 1064.—Insurance 2660.

Colo.App. 2001. Lessee, as an authorized driver of the motor home and motorcycles, was the “named insured” under his insurance and rental contract with the self-insured lessor and, therefore, was entitled to personal injury protection (PIP) benefits for injuries sustained while riding rented motorcycle. West’s C.R.S.A. § 10-4-707(1)(a), (2).—*Brucha v. Cruise America, Inc.*, 53 P.3d 700, certiorari denied.—Insurance 2660.

Conn. 1998. Self-insured employer was functional equivalent of “named insured” within meaning of statute entitling employee of named insured to uninsured motorist (UM) or underinsured motorist (UIM) benefits from employer, if employee is injured while occupying covered motor vehicle in course of employment; by electing to become self-insurer, employer became insured. C.G.S.A. §§ 38a-336(f), 38a-363(b), 38a-371(c).—*Conzo v. Aetna Ins. Co.*, 705 A.2d 1020, 243 Conn. 677.—Insurance 2776.

Conn. 1973. That wrecker owner’s employee, who was injured when car was struck by an uninsured motorist after wrecker lifted car from top of esplanade railing between lanes of traffic, was acting within scope of his employment at time of accident did not render employee a “named insured” or “designated insured” under policy which was issued to owner and which gave protection against damages caused by uninsured vehicle to named insured and any designated insured.—*Testone v. Allstate Ins. Co.*, 328 A.2d 686, 165 Conn. 126.—Insurance 2660.

Conn.App. 1992. Under Connecticut law, “named insured” refers only to name actually appearing on insurance policy.—*Ceci v. National In-*

dem. Co., 603 A.2d 412, 26 Conn.App. 661, certification granted in part 608 A.2d 689, 221 Conn. 927, reversed 622 A.2d 545, 225 Conn. 165.—Insurance 1825.

Fla.App. 3 Dist. 1993. Borrower, whose failure to insure property financed by lender resulted in lender’s purchase of collateral protection insurance policy, was not a “named insured,” “omnibus insured,” or “named beneficiary” of that policy within meaning of attorney’s fee statute, and was not entitled to recover attorney’s fees after prevailing in action against insurer for policy proceeds; borrower was not designated as insured under policy, and policy did not encompass any person or entity other than lender as “insured,” and did not name any beneficiaries. West’s F.S.A. §§ 627.428, 627.428(1).—*Romero v. Progressive Southeastern Ins. Co.*, 629 So.2d 286.—Insurance 3365.

Fla.App. 3 Dist. 1966. Where policy and statute used the designations “insured” and “named insured” or “insured named”, it was clear that insurance company in drafting policy, and legislature in drafting statute, intended a distinction between the terms. F.S.A. § 627.0851.—*Kohly v. Royal Indem. Co.*, 190 So.2d 819, certiorari denied 200 So.2d 813.—Insurance 2660.

Ga. 2001. Corporation whose corporate veil had been pierced as an alter ego of its sole shareholder was a “named insured” under a motor carrier’s liability policy listing the shareholder’s sole proprietorship as the only named insured, even though the liability of the proprietorship was not based on any negligence directly attributable to it, but entirely on the alter ego theory.—*Miller v. Harco Nat. Ins. Co.*, 552 S.E.2d 848, 274 Ga. 387, reconsideration denied, answer to certified question conformed to 280 F.3d 1353.—Insurance 2891.

Ga.App. 2001. Child did not live with named insured under automobile insurance policy so as to be entitled to uninsured motorist (UM) benefits, even though policy named sibling with whom injured child lived as driver, where policy was held by injured child’s non-custodial parent, and sibling was not “named insured” under policy.—*Georgia Farm Bureau Mut. Ins. Co. v. Wilkerson*, 549 S.E.2d 740, 250 Ga.App. 100, reconsideration denied, and certiorari denied.—Insurance 2661.

Ga.App. 1975. Uninsured automobile owned by wife of insured under liability policy covering truck was not “temporary substitute automobile” within meaning of policy, since automobile was owned by “named insured,” defined by policy to include spouse of individual named in declaration.—*Cotton States Mut. Ins. Co. v. Bowden*, 221 S.E.2d 832, 136 Ga.App. 499.—Insurance 2658.

Ga.App. 1973. Amendment to insurance policy which added daughter of insured as a driver of the vehicle did not make her a “named insured,” where policy defined a named insured as “any individual named in Item 1 of the declarations and also includes his spouse, if a resident of the same household,” where only person named in the amendment to the policy under Item 1 was the spouse of the

insured.—*Griffin v. State Farm Mut. Auto. Ins. Co.*, 199 S.E.2d 101, 129 Ga.App. 179.—Insurance 2661.

Ill.App. 4 Dist. 1971. Where automobile liability policy defined temporary substitute vehicle as “an automobile not owned by the named insured” and defined “named insured” to include insured’s spouse if resident of same household, and insured’s spouse resided in his household, paid purchase price of automobile from her separate funds, received bill of sale and out-of-state title in her name and, after accident involving the automobile, was issued in-state title in her name, such spouse was a named insured and was owner of the automobile, and thus such automobile was not “temporary substitute vehicle” within meaning of policy.—*Illinois Nat. Ins. Co. v. Trainer*, 272 N.E.2d 58, 1 Ill.App.3d 34.—Insurance 2658.

Iowa 1973. Automobile borrowed by insured whose own automobile was out of service and undergoing repair was a “temporary substitute automobile” and borrower was the “named insured” under his policy and consent of owner to use of automobile by driver was not a necessary element to liability of borrower’s insurer.—*Schneberger v. U. S. Fidelity & Guaranty Co.*, 213 N.W.2d 913.—Insurance 2658, 2663.

Ky.App. 1979. In household exclusion to flying club’s insurance policy providing that coverage was unavailable to one who was “* * * a member of the named insured’s household,” words “named insured” operated to exclude claim for death of a member of household of any named insured within the policy definition and not only to a claim for the death of any person who was a member of the household of a named insured who was claiming coverage under the policy.—*National Ins. Underwriters v. Lexington Flying Club, Inc.*, 603 S.W.2d 490.—Insurance 2332.

La. 1997. Deputy sheriff was not “named insured” within meaning of business automobile insurance policy issued to sheriff’s department; policy defined “named insured” as “You,” uninsured motorist (UM) coverage would follow deputies regardless of where they were or what they were doing, if they were named insureds, and nothing indicated intent by sheriff to provide UM coverage at all times and places and under all conditions; abrogating *Employers Ins. Co. of Wausau v. Dryden*, 422 So.2d 1243.—*Valentine v. Bonneville Ins. Co.*, 691 So.2d 665, 1996-1382 (La. 3/17/97), rehearing denied.—Insurance 2660.

La.App. 1 Cir. 1979. Husband, who was resident of same household as wife, was “named insured” under automobile liability policy issued for automobile owned by the wife, and thus coverage with respect to accident was not precluded on basis that wife was “named insured” under the policy and husband was owner of truck involved in accident.—*Malbrough v. American Fidelity Fire Ins. Co.*, 374 So.2d 146, appeal after remand 428 So.2d 1110.—Insurance 2661.

La.App. 1 Cir. 1976. Where son was answerable to parents for use of automobile, father paid for such vehicle and for gasoline and maintenance and

primary purpose for purchase of vehicle was to remove mother’s burden of transporting son and daughter, son did not have complete dominion and control over automobile as to permit him to be regarded as a “named insured” with authority to grant permission to drive automobile within meaning of automobile policy which listed father as named insured and provided that insureds included named insured and persons using automobile with permission of named insured.—*Morgan v. Matlack, Inc.*, 331 So.2d 568, writ issued 337 So.2d 518, reversed 342 So.2d 167, appeal after remand 366 So.2d 1071, writ denied 369 So.2d 1352.—Insurance 2666.

La.App. 2 Cir. 2000. Department supervisor for a corporation was not a “named insured” under an automobile insurance policy issued to the corporation.—*Adams v. Thomason*, 753 So.2d 416, 32,728 (La.App. 2 Cir. 3/1/00), rehearing denied, writ denied 764 So.2d 965, 2000-1221 (La. 6/16/00).—Insurance 2660.

La.App. 2 Cir. 1999. Named insured’s spouse was an “insured named in the policy” and a “named insured” entitled to select lower limits of uninsured motorist (UM) benefits, even though the policy did not designate her as a named insured; the spouse was the applicant and signed the application and selection form, and the form became part of the policy. LSA-R.S. 22:1406.—*Bonnette v. Robles*, 740 So.2d 261, 32,191 (La.App. 2 Cir. 8/18/99).—Insurance 2660, 2778.

Me. 1979. Under group life home mortgage policy, insured was only “named * * * insured” nor was there any “other person” whose life was insured, and thus assignee of named beneficiary of policy, who did not obtain status of insured under policy because he was devisee of property for which insurance was issued, had no claim against insurer as “named or other person insured” and hence could not recover interest and attorney fees under statute which provides for payment of interest and attorney fees to insured person when insurer fails to make timely payment of claims. 24-A M.R.S.A. § 2436.—*Burne v. John Hancock Mut. Life Ins. Co.*, 403 A.2d 775.—Insurance 3365, 3396.

Md. 1991. Even if wife was not “named insured” on automobile policy, wife was “insured” and “covered person” as family member, for purposes of uninsured motorist coverage, by merit of residing in same household as husband, even though wife moved out of family home one and one-half months before death; evidence that wife never requested divorce, did not change address on driver’s license or voter registration, had month-to-month apartment lease, remained co-owner of insured vehicle, and was listed on policy supported finding that separation was not clearly permanent. Code 1957, Art. 48A, § 541(c).—*Forbes v. Harleysville Mut. Ins. Co.*, 589 A.2d 944, 322 Md. 689.—Insurance 2661.

Mass.App.Ct. 1996. Pedestrian who was trustee and beneficiary of insured trust was not “named insured” under automobile insurance policy issued to trust and, therefore, could not recover uninsured

motorist (UM) benefits for injuries caused by hit-and-run driver, even if trust was nominee trust controlled by beneficiaries; policy provided UM coverage for pedestrian only if pedestrian was named insured, and pedestrian had no reasonable expectation of coverage.—*Tatarian v. Commercial Union Ins. Co.*, 672 N.E.2d 997, 41 Mass.App.Ct. 731.—Insurance 2660.

Mich. 1975. Under automobile policy, liability coverage with respect to nonowned automobiles applied to the “named insured” only if he was an individual; corporation, which along with one individual was a named insured, was not an “individual.”—*Sentry Sec. Systems, Inc. v. Detroit Auto. Inter-Insurance Exchange*, 228 N.W.2d 779, 394 Mich. 96.—Insurance 2660.

Mich. 1972. With respect to uninsured motorist coverage, “other insurance” clause which was to apply if insured was “a named insured under other similar insurance available to him” was not applicable when insured, while riding as a passenger, was injured through the fault of an uninsured motorist, though host driver’s policy provided uninsured motorist coverage to the passenger, where guest passenger was not a “named insured” under host driver’s policy in the strict sense that her name was used or that she was referred to as a member of the family or some other pertinent relationship.—*Rowland v. Detroit Auto. Inter-Insurance Exchange*, 201 N.W.2d 792, 388 Mich. 476.—Insurance 2798.

Mich.App. 1999. Vehicle lessee was not a “named insured” under the lessor rental company’s automobile policy where the rental agreement designated the lessee as the driver and the policy clearly indicated that the lessee had rented the vehicle from the named insured; accordingly, the lessee was not within the no-fault act’s exclusion of property protection coverage for damage to property owned by a “person named in the policy.” M.C.L.A. § 500.3123(1)(b).—*State Farm Fire and Cas. Co. v. Old Republic Ins. Co.*, 595 N.W.2d 149, 234 Mich.App. 465, remanded 605 N.W.2d 321, 461 Mich. 928, on remand 617 N.W.2d 715, 242 Mich. App. 105, appeal granted in part 635 N.W.2d 305, reversed 644 N.W.2d 715, 466 Mich. 142.—Insurance 2660, 2828.

Mich.App. 1995. Only grandfather, and not father, of minor injured in out-of-state automobile accident was “named insured” under grandfather’s automobile policy, and thus minor was not entitled under no-fault act to personal injury protection (PIP) benefits under the policy as a relative domiciled in his father’s household, where policy designated grandfather as “insured,” while minor’s father was designated as a principal driver of three vehicles owned by him which had been added to the grandfather’s policy after father’s policy lapsed for nonpayment of premium. M.C.L.A. § 500.3111.—*Harwood v. Auto-Owners Ins. Co.*, 535 N.W.2d 207, 211 Mich.App. 249, appeal denied 549 N.W.2d 565, 451 Mich. 874.—Insurance 2661.

Mich.App. 1990. Injured motorist, who was listed in policy as one driver of his car, was not “person named in the policy” within meaning of

statute making personal protection insurance applicable to accidental bodily injury to person named in policy, person’s spouse, or relative domiciled in same household, and, thus, insurer of vehicle involved in accident and insurer of motorist’s car occupied same level of priority for payment of no-fault benefits; “person named in the policy” was synonymous with “named insured”; and motorist’s parents resided with him and were named insureds of both policies. M.C.L.A. § 500.3114(1).—*Transamerica Ins. Corp. of America v. Hastings Mut. Ins. Co.*, 460 N.W.2d 291, 185 Mich.App. 249, appeal denied.—Insurance 2660, 2841.

Minn. 1983. Wife’s move from marital residence did not nullify her status as “named insured” under homeowner’s policy, barring recovery for bodily injury, where policy definitions distinguished between “named insured” and insured, imposing residency requirement only upon latter, and separated wife had insurable interest in insured property.—*State Farm Fire and Cas. Co. v. McPhee*, 336 N.W.2d 258.—Insurance 2272.

Minn. 1964. Railroad was a “named insured” not just an “additional insured”, under liability policy issued transfer company, where policy had been indorsed to cover railroad’s liability for use of transfer company’s motor vehicles or trailers.—*Minneapolis, St. P. & S.S.M. R. Co. v. St. Paul Mercury Indem. Co.*, 129 N.W.2d 777, 268 Minn. 390, enforcement granted *G. C. Kohlmer, Inc. v. Mollenhauer*, 140 N.W.2d 47, 273 Minn. 126.—Insurance 2891.

Minn.App. 1995. Insured’s child living in his household was “named insured” under the policy, and, thus, automobile insurer that issued policy was primary obligor for no-fault benefits as against policy issued to child’s sibling who was driver of vehicle in which child was injured as passenger and as against another policy issued to child’s parent; policy listed child under “driver information” category, defined “named insured” as person or organization named in declarations, and defined “you” and “your” to include resident relative, and ambiguity in policy language had to be construed against insurer. M.S.A. §§ 65B.43, subd. 5, 65B.47, subd. 4.—*Bemboom v. Dairyland Ins. Co.*, 529 N.W.2d 467.—Insurance 2660, 2841.

Mo.App. E.D. 1992. “Named insured” generally refers only to those persons specifically designated on face of contract.—*American Family Mut. Ins. Co. v. Truck Ins. Exchange*, 825 S.W.2d 687.—Insurance 1825.

Mo.App. 1972. Where insured husband slept most nights at his garage, for stated reason that he did not get along with one of wife’s sons, relations of husband and wife were amicable, there were no divorce proceedings, husband and wife intended to live together as they had before as soon as son was straightened out and husband paid own expenses and stayed nights at garage with his wife, wife was a resident of the same household as individually named insured husband and thus was a “named insured” under automobile policy.—*Stone v. Waters*, 483 S.W.2d 639.—Insurance 2661.

N.J.Super.L. 1979. Where insured was resident of same household as her husband, the named insured in automobile policy, at time option letter was received from insurer concerning optional personal injury protection coverages, insured fell within category of "named insured" within meaning of state insurance regulation and statute defining named insured, even if insured and her husband, at time optional coverages were offered, had agreed to separate. N.J.S.A. 39:6A-2, subd. g, 10.—Lumbermens Mut. Cas. Co. v. Carriere, 406 A.2d 994, 170 N.J.Super. 437.—Insurance 2661.

N.Y.Sup. 1977. Term "named insured" applies only to assured named in policy.—Pelych v. Potomac Ins. Co., 401 N.Y.S.2d 374, 91 Misc.2d 973.—Insurance 2660.

N.C.App. 2001. Family farm trustee who occupied the farm and owned twenty percent was the "named insured" under automobile policies issued to the trust.—Erwin v. Tweed, 544 S.E.2d 803, 142 N.C.App. 643, review denied 551 S.E.2d 437, 353 N.C. 724.—Insurance 2660.

N.C.App. 1996. Listed driver named in automobile policy for underwriting purposes was not synonymous with "named insured." G.S. § 20-279.21(b)(3).—Nationwide Mut. Ins. Co. v. Williams, 472 S.E.2d 220, 123 N.C.App. 103.—Insurance 2660.

N.C.App. 1991. Corporate insured's majority shareholder, who was injured when her bicycle was struck by automobile, was not "named insured" who could recover underinsured motorist benefits, despite contention that, because of her status as both majority shareholder and insured driver under corporation's policy, she was same as corporation, which was only named insured. G.S. § 20-279.21(b)(3, 4).—Busby v. Simmons, 406 S.E.2d 628, 103 N.C.App. 592.—Insurance 2660.

N.C.App. 1981. Where husband's automobile had been withdrawn from normal use because of its breakdown and need of repairs and, because of its condition, husband was driving automobile owned by his wife with her permission, automobile owned by wife and involved in collision while being operated by husband was "temporary substitute automobile" as defined in policy of liability insurance issued to husband so as to afford excess coverage of collision under that policy, notwithstanding fact that wife was "named insured" under policy and definition of "temporary substitute automobile" excluded vehicles owned by "named insured."—Nationwide Mut. Ins. Co. v. Taylor, 284 S.E.2d 532, 55 N.C.App. 76, review denied 290 S.E.2d 703, 305 N.C. 302.—Insurance 2658.

N.D. 1985. Individual was "named insured" for purposes of insurance coverage under policies in which his name appeared along with trade names he did business under, where individual owned assets of various businesses, he was the "entity" who would be subject to liability indemnified against by policies, trade names listed were not separate legal entities and could not own property, were not subject to liability in any suit, and could not enter into contract, and "party" who contracted

for insurance was individual as there was no other legal entity which was capable of entering into contract.—Carlson v. Doekson Gross, Inc., 372 N.W.2d 902.—Insurance 2272.

N.D. 1985. When designation of "named insured" in policy is in form "individual dba" individual is "named insured," irrespective of whatever language follows "dba."—Carlson v. Doekson Gross, Inc., 372 N.W.2d 902.—Insurance 2272.

Ohio App. 2 Dist. 1961. Son of insured's wife by prior marriage was an "insured" under family combination automobile policy while son was driving automobile not owned by insured, where wife resided with insured, and policy defined "named insured" as insured's spouse if resident of same household and provided that any relative of "named insured" was insured.—Randall Ins. Agency, Inc. v. Burns, 185 N.E.2d 309, 115 Ohio App. 397, 21 O.O.2d 9, 93 A.L.R.2d 1041.—Insurance 2661.

Ohio App. 6 Dist. 1998. Automobile policyholder's wife was not a "named insured" where she was not listed on the declaration page and was not the party who contracted with the insurer, and where the policy language, particularly the definitions of "you" and "your," could not reasonably be interpreted as making her a "named insured" by virtue of her spousal status.—Stacy v. Nationwide Mut. Ins. Co., 709 N.E.2d 519, 125 Ohio App.3d 658, appeal allowed 694 N.E.2d 982, 82 Ohio St.3d 1433, appeal dismissed as improvidently allowed 707 N.E.2d 507, 85 Ohio St.3d 1203, 1999-Ohio-451, reconsideration stricken 708 N.E.2d 1008, 85 Ohio St.3d 1453, reconsideration denied 709 N.E.2d 851, 85 Ohio St.3d 1481.—Insurance 2660.

Ohio App. 8 Dist. 1999. Person who was not listed on the declarations page of an automobile policy was not a "named insured" for purposes of uninsured/underinsured motorist (UM/UIM) coverage. R.C. §§ 3937.18, 3937.30.—Hillyer v. State Farm Mut. Auto Ins. Co., 722 N.E.2d 108, 131 Ohio App.3d 172, appeal not allowed 710 N.E.2d 717, 85 Ohio St.3d 1498, reconsideration granted 713 N.E.2d 1053, 86 Ohio St.3d 1444, appeal dismissed as improvidently allowed 719 N.E.2d 1, 87 Ohio St.3d 1222, 1999-Ohio-25.—Insurance 2660.

Ohio App. 8 Dist. 1999. In order to be a "named insured," a person must be listed as such on the declarations page of the policy.—Hillyer v. State Farm Mut. Auto Ins. Co., 722 N.E.2d 108, 131 Ohio App.3d 172, appeal not allowed 710 N.E.2d 717, 85 Ohio St.3d 1498, reconsideration granted 713 N.E.2d 1053, 86 Ohio St.3d 1444, appeal dismissed as improvidently allowed 719 N.E.2d 1, 87 Ohio St.3d 1222, 1999-Ohio-25.—Insurance 2100.

Ohio Com.Pl. 1994. Spouse of named insured listed on declaration page was not "named insured" within meaning of statute requiring uninsured motorist (UM) and underinsured motorist (UIM) coverage equal to liability limits, unless named insured rejects it or elects lesser sum. R.C. §§ 3937.18, 3937.18(A)(1, 2), 3937.18(C).—Beckman v. Pruden-

tial Ins. Co., 647 N.E.2d 884, 69 Ohio Misc.2d 1.—Insurance 2778.

Okla. 1988. “Named insured” within meaning of statute mandating uninsured motorist coverage applies to person named as insured in insurance contract for rented vehicle. 36 O.S.1981, §§ 3636, 3636(F).—Moon v. Guarantee Ins. Co., 764 P.2d 1331, 1988 OK 85.—Insurance 2774.

Pa.Super. 1998. Injured passenger’s husband who was deemed to have chosen the limited tort alternative as the owner of an uninsured, currently registered vehicle was not a “named insured” within meaning of Motor Vehicle Financial Responsibility Law (MVFL) defining “insured” to include resident relative of named insured and making limited tort option selected by named insured applicable to all insureds; thus, passenger was not “insured” subject to limited tort option. 75 Pa.C.S.A. § 1705(a)(5), (b)(2, 3), (f).—Ickes v. Burkes, 713 A.2d 653.—Autos 251.13.

Pa.Super. 1989. Motorist killed in automobile accident that did not involve any vehicles to which his father held title was not “named insured” under his father’s automobile policy, and therefore insurer under that policy, which had paid postmortem benefits to motorist’s estate, was entitled under former No-Fault Motor Vehicle Insurance Act to reimbursement from insurer of father’s other vehicles, even though deceased motorist essentially “owned” vehicle insured by first policy, as he made payments on vehicle and on vehicle’s insurance, where there was no evidence that insurer was cognizant that named insured was purchasing insurance on vehicle for his son. 40 P.S. § 1009.204(b) (Repealed).—Stump v. State Farm Mut. Auto. Ins. Co., 564 A.2d 194, 387 Pa.Super. 310.—Insurance 2660, 3507(1).

S.C. 1962. Where funeral benefit coverage under automobile policy followed insured while driving a “temporary substitute automobile” which was defined as an automobile not owned by “named insured” which was defined as including insured’s spouse, if a resident of same household, and insured died while his automobile was out of commission and while driving an automobile owned solely by insured’s wife, wife’s automobile was not owned by “named insured” and hence was covered as a “temporary substitute automobile” under policy rendering insurer liable for funeral benefits.—Baxley v. State Farm Mut. Auto. Liability Ins. Co., 128 S.E.2d 165, 241 S.C. 332.—Insurance 2658.

S.D. 2001. The named insureds’ child who was injured as a passenger in her parents’ car was not a “named insured” for purposes of an exception to the family exclusion of liability coverage for injury to an insured, and, thus, the policy’s statutory minimum coverage for injury to a named insured did not apply; even though the policy listed the child as a driver, the declarations page did not list her as a named insured. SDCL 58–23–6(5).—Employers Mut. Cas. Co., Inc. v. State Auto Ins., Inc., 623 N.W.2d 462, 2001 SD 34.—Insurance 2745, 2756(1).

Tenn.Ct.App. 1998. Wife who moved out of marital residence after separation was a “named insured” under homeowners’ insurance policy is-

sued to husband and wife, and, thus, her four-year-old child who moved with her and was injured by the husband was a resident of a named insured’s household and, therefore, was an “insured” within the meaning of the family member exclusion of coverage for the husband’s liability for injury to an insured.—State Farm Fire and Cas. Co. v. White, 993 S.W.2d 40, appeal denied.—Insurance 2356.

Tenn.Ct.App. 1963. Because public liability insurer of automobile was not apprised of facts that automobile had been placed in name of driver’s mother because of driver’s minority, that driver actually owned automobile, and that, except in name only, driver was insured, mother was “named insured” within policy and driver was a “permittee”.—Pollard v. Safeco Ins. Co., 376 S.W.2d 730, 52 Tenn.App. 583.—Insurance 2663.

Va. 1987. Endorsement appended to policy issued to bailor of tractor, stating that coverage provided by policy included as additional insureds any person or organization for whom named insured was obligated by written agreement to provide liability insurance, did not render bailee of tractor a “named insured” under policy so as to render inapplicable statute requiring every motor vehicle liability policy issued to a “named insured” leasing vehicles for period of six months or more to contain provision that insurance coverage afforded a person other than the named insured is not applicable if there is any other collectible insurance applicable to the same loss covering a permissive user under a policy with limits at least equal to financial responsibility requirements. Code 1950, § 38.2–2205(A)(1); § 38.1–381(a), (a3) (Repealed).—Aetna Cas. & Sur. Co. v. National Union Fire Ins. Co., 353 S.E.2d 894, 233 Va. 49.—Insurance 2660.

Wash. 1964. In order to come within coverage of omnibus clause in standard policy of liability insurance, use of automobile must have been with the permission, either express or implied, of person named in policy as “named insured.”—Hunton v. McCarvel, 396 P.2d 639, 65 Wash.2d 242.—Insurance 2666.

Wash. 1948. In an automobile liability policy, word “insured” without further qualification, applies to any person entitled to protection under the policy, including a named insured, but term “named insured” can apply only to person designated in policy as named insured.—Holthe v. Iskowitz, 197 P.2d 999, 31 Wash.2d 533.—Insurance 2660.

Wash. 1948. Under automobile liability policy providing that unqualified word “insured” included “named insured” and any person while using vehicle or any person legally responsible for use thereof provided actual use was with permission of named insured, and containing indorsement naming daughter in household of named insured as one to be covered as insured, daughter was not a “named insured”, but simply an “insured” thereunder.—Holthe v. Iskowitz, 197 P.2d 999, 31 Wash.2d 533.—Insurance 2661.

W.Va. 1952. The unqualified phrase “named insured” has a restricted meaning and does not

apply to any persons other than those named in the policy.—*Farley v. American Auto. Ins. Co.*, 72 S.E.2d 520, 137 W.Va. 455, 34 A.L.R.2d 933.—Insurance 1825.

W.Va. 1952. Automobile liability policy issued to two named insureds for a described automobile but covering substituted automobile not owned by “named insured” covered accident which occurred when substitute automobile owned by but one of the named insureds was being sued by other named insured.—*Farley v. American Auto. Ins. Co.*, 72 S.E.2d 520, 137 W.Va. 455, 34 A.L.R.2d 933.—Insurance 2658.

Wis. 2001. Car lessee was “named insured” under lessor’s excess automobile policy, even though the underlying policy defined the named insured as the lessor; the declarations page of the excess policy referred to an endorsement for the definition of “named insured,” the endorsement defined “insured” and included the lessee as the renter or rentee, and the lessee had paid a premium for the excess coverage under the “International Extended Protection (IEP) Option.”—*Mau v. North Dakota Ins. Reserve Fund*, 637 N.W.2d 45, 248 Wis.2d 1031, 2001 WI 134.—Insurance 2660.

NAMED INSURED AND ANY RELATIVE

La.App. 2 Cir. 1980. Named insured’s 18-year-old daughter, who, when involved in accident caused by uninsured motorist while daughter was driving automobile owned by father, was absent from father’s home and working as a nurse’s aide, who planned to return to home and attend college, who retained her room in home and had left part of her possessions in room, whose father aided her financially and who returned home to convalesce, was a “member of the same household” as named insured father for purpose of automobile policy, which contained uninsured motorist coverage and provided insurance for “named insured and any relative” and which defined a “relative” as a relative “who is a resident of the same household.”—*Earl v. Commercial Union Ins. Co.*, 391 So.2d 934.—Insurance 2661.

NAMED INSURED EXCLUSION

Colo. 1996. “Named insured exclusion” in insurance policy excludes liability coverage for bodily injury to individual who is named insured under policy when such injury is caused by another insured under policy.—*Farmers Ins. Exchange v. Dotson*, 913 P.2d 27.—Insurance 2278(1).

NAMED INSUREDS

D.Wyo. 1998. Under Wyoming law, additional insureds were also “named insureds” within meaning of commercial general liability (CGL) insurance policy issued to contractor; it failed to define “named insured,” failed to limit it to person listed on declarations page, and contained “Separation of Insureds” clause making policy apply separately to each insured.—*Marathon Pipeline Co. v. Maryland Cas. Co.*, 5 F.Supp.2d 1252, affirmed in part, reversed in part *Marathon Ashland Pipe Line LLC v.*

Maryland Cas. Co., 243 F.3d 1232.—Insurance 2361.

Wis.App. 1991. Uninsured motorist provision of commercial fleet policy issued to corporate insured includes minors placed by juvenile courts at insured’s facility under children in need of protection and services (CHIPS) dispositional orders as “named insureds” entitled to stack coverage, rather than “occupancy insureds.”—*Carrington v. St. Paul Fire & Marine Ins. Co.*, 473 N.W.2d 591, 164 Wis.2d 148, review granted 477 N.W.2d 286, affirmed 485 N.W.2d 267, 169 Wis.2d 211.—Insurance 2799.

NAMED INSURED’S PRODUCT

Del.Super. 1982. Under policy’s products hazard exclusion which defined “named insured’s product” as product manufactured, sold, handled or distributed by named insured or by others trading under his name but not including vending machine or property other than container rented to or located for use of others but not sold, named insured’s kiddie ride amusement device was not a “named insured’s product,” and thus products hazard exclusion did not bar coverage with respect to suit brought on behalf of infant who was allegedly injured by ride.—*Mount Vernon Fire Ins. Co. v. Pied Piper Kiddie Rides, Inc.*, 445 A.2d 949.—Insurance 2278(21).

NAMED INSURED’S PRODUCTS

Ariz.App. Div. 2 1977. Phrase “other than a vehicle” within comprehensive liability policies, which provided no coverage for “property damage to the named insured’s products arising out of such products or any part of such products” and that “named insured’s products” means goods or products manufactured, sold, handled or distributed by the named insured * * * including any container thereof (other than a vehicle),” was not intended to except a truck from definition of “named insured’s products,” but, rather, merely referred to the words “including any container thereof.”—*Adams Tree Service, Inc. v. Hawaiian Ins. & Guaranty Co., Ltd.*, 573 P.2d 76, 117 Ariz. 385.—Insurance 2278(21).

Ariz.App. Div. 2 1977. Even if modified chassis of truck, which insured sold to corporation and converted into dump truck, was separate “product,” it was part of truck “manufactured, sold, handled or distributed” by insured within meaning of comprehensive liability policies, which provided no coverage for “property damage to the named insured’s products arising out of such products or any part of such products” and that “named insured’s products” means goods or products manufactured, sold, handled or distributed by the named insured * * *,” thus, policies afforded no coverage for damages sustained when truck collapsed due to negligent modification.—*Adams Tree Service, Inc. v. Hawaiian Ins. & Guaranty Co., Ltd.*, 573 P.2d 76, 117 Ariz. 385.—Insurance 2278(21).

Ga.App. 1972. The wire or cable slings rigged by manufacturer of textile machinery for purpose of lifting the machinery, which broke or parted while machinery was being unloaded at the

docks were part of the "container" which had been constructed around the machinery within exclusion in policy providing that coverage relied upon did not apply "to property damage to the named insured's products arising out of such products or any part of such products," and "named insured's products" was defined as "goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, including any container thereof."—*Lewis Card & Co. v. Liberty Mut. Ins. Co.*, 193 S.E.2d 856, 127 Ga.App. 441.—*Insurance* 2278(21).

N.H. 1973. Within insurance policy's products hazard provision defining "named insured's products" as goods or products manufactured, sold, and/or distributed by the named insured or by others trading under his name including any container thereof, but not including a vending machine or any property other than such container rented to others, the word "handle" did not include rented products.—*Sun Ins. Co. of New York v. Hamanne*, 306 A.2d 786, 113 N.H. 319, 62 A.L.R.3d 884.—*Insurance* 2278(21), 2296.

NAMED ORCHESTRAS

D.Neb. 1945. The characteristics of "named orchestras" or "named bands", and fact that they are numerous throughout the country, are common knowledge.—*Nebraska Nat. Hotel Co. v. O'Malley*, 63 F.Supp. 26, certiorari denied 67 S.Ct. 868, 330 U.S. 827, 91 L.Ed. 1277, appeal dismissed 163 F.2d 1019.—*Evid* 20(1).

NAMED OR OTHER PERSON INSURED

Me. 1979. Under group life home mortgage policy, insured was only "named * * * insured" nor was there any "other person" whose life was insured, and thus assignee of named beneficiary of policy, who did not obtain status of insured under policy because he was devisee of property for which insurance was issued, had no claim against insurer as "named or other person insured" and hence could not recover interest and attorney fees under statute which provides for payment of interest and attorney fees to insured person when insurer fails to make timely payment of claims. 24—A M.R.S.A. § 2436.—*Barne v. John Hancock Mut. Life Ins. Co.*, 403 A.2d 775.—*Insurance* 3365, 3396.

NAMED OR OTHERWISE DESIGNATED * * * IN THE NOTICE OF APPEAL

C.A.D.C. 1992. Use of terms "et al." in caption of notice of appeal and "plaintiffs" in body of notice of appeal did not satisfy requirement that each and every party appealing be either "named or otherwise designated * * * in the notice of appeal." F.R.A.P. Rule 3(c), 28 U.S.C.A.—*Adkins v. Safeway Stores, Inc.*, 968 F.2d 1317, 297 U.S.App. D.C. 35, rehearing denied, certiorari denied 113 S.Ct. 968, 506 U.S. 1049, 122 L.Ed.2d 123.—*Fed Cts* 666.

NAMED OR PROVIDED FOR

Mo. 1944. Where testator had knowledge of son's death, but was not aware of the existence of

grandchildren, at time of executing will which stated that testator was not married and had no children and giving "to any person who might contest this will the sum of \$1 only, in lieu of any share in the estate either under will or through intestate succession," the grandchildren could not be regarded as "named or provided for" in the will, and testator was deemed to have died "intestate" as to grandchildren under statute providing for "pretermitted heirs". V.A.M.S. § 468.290.—*Goff v. Goff*, 179 S.W.2d 707, 352 Mo. 809, 152 A.L.R. 717.—*Des & Dist* 47(1).

Mo. 1944. A pretermitted child takes under statute independently of the will and has no remedy by way of attacking the will itself or its probate, and could not be regarded as being "named or provided for" in a will which gave \$1 to any person who "contested" testator's will. V.A.M.S. § 468.290.—*Goff v. Goff*, 179 S.W.2d 707, 352 Mo. 809, 152 A.L.R. 717.—*Des & Dist* 47(1).

NAMED PARTY

Mich. 1977. Annexation proceeding is not "contested case"; procedural right to be heard does not create any substantive legal right in "named party" and hence there are no "legal rights" of "named party" required to be determined after opportunity for evidentiary hearing within meaning of Administrative Procedures Act. M.C.L.A. §§ 24.201 et seq., 117.1 et seq., 117.9, 123.1001 et seq., 123.1004, 123.1018, 209.4.—*Midland Tp. v. Michigan State Boundary Commission*, 259 N.W.2d 326, 401 Mich. 641, appeal dismissed 98 S.Ct. 1873, 435 U.S. 1004, 56 L.Ed.2d 386.—*Mun Corp* 33(1).

Va.App. 1991. Denial of request of environmental organization for formal hearing with respect to discharge permit was not a "case decision" of the State Water Pollution Control Board for purposes of the Administrative Procedure Act, and the organization was not a "named party" on the proceeding, so that no appeal was available from the denial of the request for formal hearing. Code 1950, §§ 9-6.14:4, subd. D, 9-6.14:16.—*Environmental Defense Fund v. Virginia State Water Control Bd.*, 404 S.E.2d 728, 12 Va.App. 456.—*Admin Law* 701; *Environ Law* 652.

NAMED-PERIL POLICY

E.D.Va. 1997. Under traditional form of property insurance known as "named-peril policy," insurer agrees to indemnify its insured for losses resulting from certain risks of loss or damage which are specifically enumerated within provisions of policy; in contrast, under "jewelers' block policy" all risks of loss or damage to jewelry may be insured, subject to certain exceptions.—*Star Diamond, Inc. v. Underwriters at Lloyd's, London*, 965 F.Supp. 763.—*Insurance* 2140.

NAMED PERILS

D.N.J. 1992. Machinery endorsement to "named perils" policy of hull, protection and indemnity insurance, excluding coverage for loss or damage to machinery and appurtenances unless directly caused by, inter alia, "sinking," did not

cover damage caused by flooding or taking on of water, even though there was substantial likelihood that vessel would have sunk absent actions taken by crew or others or unless water abated; "sinking" was incomplete and abated, and damage caused by "sinking" did not include damage caused by process of sinking.—*DeRose v. Albany Ins. Co.*, 792 F.Supp. 973.—Insurance 2220(1), 2230.

NAMED-PILOT POLICY

C.A.10 (N.M.) 1961. "Named-pilot policy" was aircraft policy requiring names of pilots for purpose of premium computation, and insurer was not liable thereon for accident occurring when pilot not named was operating aircraft, unless insurer waived right to insist on strict compliance with named-pilot provision.—*Smith v. Orion Ins. Co.*, 298 F.2d 528.—Insurance 2131.

NAMELY

Ala.App. 1912. The office of the phrase "to wit" in pleading is to state time, place, number, or manner, which are not of the essence of the matter in issue, so that the fact need not be proved strictly as alleged. When used in pleading, but not for that purpose, its general office is to particularize that which is too general in a preceding sentence and render clear and of certain application what might otherwise seem doubtful or obscure. Where the phrase "to wit" in a requested instruction in an action for conversion might have been taken by the jury in its popular sense, as, "namely," leading them to believe that, unless the property was converted on the particular date specified, there could be no recovery, it was properly refused, although those words were used in the complaint in the same connection, since words having a well-defined meaning in pleading might in a charge mislead the jury, and an instruction should be refused which is calculated to mislead the jury. The phrase "to wit," when used elsewhere than in pleading, is used to render clear, certain, and specific that which has preceded it, whether the matter referred to relates to place, time, manner, or an actual existing thing. An allegation in a complaint for conversion that the property was converted on "to wit," a certain date, relieved plaintiff of proving that it occurred on that particular date, and permitted him to prove that it occurred on or about that date.—*J. R. Kilgore & Son v. Shannon & Co.*, 60 So. 520, 6 Ala.App. 537.

La. 1934. Word "namely," following general grant of authority, did not exclude any particular municipal improvement which might be reasonably included within general grant, but made certain of inclusion of those specifically named. Word "namely" has same meaning as 'videlicet,' which is a name given to phrase 'to wit,' which is phrase effect of which is to particularize what is too general in preceding sentence.—*Garrison v. City of Shreveport*, 154 So. 622, 179 La. 605.—Mun Corp 911.

N.J.Super.Ch. 1951. The word "namely" means by name, by particular mention, specific, especially, expressly, that is to say, to wit.—*Publix Asbury Corp. v. City of Asbury Park*, 86 A.2d 798, 18

N.J.Super. 286, affirmed 86 A.2d 806, 18 N.J.Super. 192, certification denied 89 A.2d 305, 9 N.J. 609.

S.D. 1962. Where any fact alleged in pleading is preceded by "to wit", "that is to say", or "namely", such fact is laid under a "videlicet".—*State v. Sudrala*, 116 N.W.2d 243, 79 S.D. 587.—Ind & Inf 77.

NAME OF DEBTOR

Bkrtcy.N.D.Ohio 1989. Under Ohio UCC, financing statement which was filed solely under debtor's trade, and not his individual, name was not filed in "name of debtor" and did not perfect security interest, where debtor's trade and individual names were totally dissimilar. Ohio R.C. § 1309.39(G).—In re Pretzer, 100 B.R. 879.—Sec Tran 92.1.

NAME OF INDIVIDUAL

Cust. & Pat.App. 1933. Ordinary "surname" without baptismal name held "name of individual" within statute, and not subject to registration as trade-mark. Trade-Mark Act Feb. 20, 1905, § 5, 15 U.S.C.A. § 85.—*American Tobacco Co. v. Wix*, 62 F.2d 835, 20 C.C.P.A. 835.—Trade Reg 43.4.

NAME ON THE CHECK

Iowa 1996. Income for purposes of Medicaid eligibility must be determined under "name on the check" rule prior to any reduction for family support and is based not on what funds are actually available to recipient but on what recipient initially received.—*Clark v. Clark v. Iowa Dept. of Human Services*, 555 N.W.2d 472.—Health 471(2).

NAME OR LIKENESS

Ind. 2001. Phrase "name or likeness" is commonly used in the context of misappropriation, and embraces the concept of a person's character, which is legally protected against appropriation by another for his own use or benefit.—*Felsher v. University of Evansville*, 755 N.E.2d 589.—Torts 8.5(6).

NAMES

D.Del. 1995. "Lloyd's of London" is not insurance company but rather it is marketplace where insurance investors buy and sell insurance risks; individual investors are known as "underwriters" or "Names" and do not operate individually, but as members of syndicates, and it is these syndicates, which are simply groups of Names, which underwrite coverage for an insured.—*Transamerica Corp. v. Reliance Ins. Co. of Illinois*, 884 F.Supp. 133, on remand 1995 WL 1312656.—Insurance 1220.

NAMES OF THE PARTIES

N.D.Ga. 1979. For purposes of the Georgia statute which sets forth requirements for filing a lis pendens relating to Georgia realty, including requirement that notice of the institution of a suit as to real property in the state contain the "names of the parties," term "parties" designates only actual parties to the pending suit. Code Ga. § 67-2801.—*Federal Deposit Ins. Corp. v. McCloud*, 478 F.Supp. 47.—Lis Pen 16.

NANTY-GLO RULE

Pa.Super. 1995. Under "*Nanty-Glo* rule," summary judgment may not be entered where moving party relies exclusively upon oral testimony, either through testimonial affidavits or deposition testimony, to establish absence of genuine issue of material fact; however, exception exists where moving party supports motion by using admissions of opposing party or opposing party's own witnesses.—*Porterfield v. Trustees of Hosp. of University of Pennsylvania*, 657 A.2d 1293, 441 Pa.Super. 529.—Judgm 185(4), 185(6).

Pa.Super. 1987. The "*Nanty-Glo* Rule" requires that, when motions for directed verdicts are grounded exclusively on the testimony of witnesses who are uncontradicted or unimpeached, the issues must be submitted to the jury.—*Moriens v. Albert Einstein Hosp.*, 526 A.2d 1203, 363 Pa.Super. 557, appeal granted 554 A.2d 510, 520 Pa. 618.—Trial 141.

NAPHTHA

U.S.Okla. 1925. "*Naphtha*" is a generic term, and embraces the lighter or more volatile parts of crude oil down to, and sometimes including, kerosene, and takes in all the elements of finished gasoline; the words "*naphtha*" and "*gasoline*" being often used interchangeably to include the unfinished product of which the gasoline of commerce is made.—*U.S. v. Gulf Refining Co.*, 45 S.Ct. 597, 268 U.S. 542, 69 L.Ed. 1082.

M.D.Pa. 1998. "*Naphtha*" is not a substance covered by CERCLA or Pennsylvania Hazardous Sites Cleanup Act (PaHSCA), as it is a product of petroleum; it is a colorless, volatile petroleum distillate, usually an intermediate product between gasoline and benzene, used as a solvent or fuel. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101(14), 42 U.S.C.A. § 9601(14); 35 P.S. §§ 6020.101-6020.1305 et seq.—*Andritz Sprout-Bauer, Inc. v. Beazer East, Inc.*, 12 F.Supp.2d 391.—*Environ Law* 440.

Iowa 1931. "*Naphtha*" held not "*gasoline*" within law imposing tax on gasoline (Code 1927, §§ 4755-b38, 5093-a1).—*Lineberger v. Johnson*, 239 N.W. 679, 213 Iowa 800.—Tax 1294.

Mass. 1912. "*Naphtha*," within Rev.Laws, c. 102, § 108, defined.—*Gately v. Taylor*, 97 N.E. 619, 211 Mass. 60, 39 L.R.A.N.S. 472.—Explos 9.

Tex.Civ.App.—Fort Worth 1931. Violation of ordinance requiring proper ventilation of dry cleaning establishment constituted negligence as matter of law precluding recovery for damages caused by explosion, even if dealer was negligent in delivering gasoline and "*naphtha*" when only *naphtha* had been ordered.—*Magnolia Petroleum Co. v. Beck*, 41 S.W.2d 488, writ dismissed w.o.j.—Explos 9.

NAPHTHALENE

Cust. & Pat.App. 1947. The term "*naphthalene*" identifies compounds having two fused benzene rings, each of which is a 6-carbon ring, with two of

the carbons common to both rings.—*In re Jones*, 162 F.2d 638, 34 C.C.P.A. 1168.

NAPRAPATHY

Ill.App.1 Dist. 1941. In prosecution under count charging that defendant without being licensed to treat human ailments, unlawfully attached to his name the title of Doctor or some other word indicative that he was engaged in treatment of human ailments as a business, evidence that defendant's name with the title Doctor and "*Naprapathic Physician*" attached thereto was written and stamped on descriptive literature which was given to client sustained conviction. S.H.A. ch. 91, § 161. A "*physician*" is a person skilled in physics or the art of healing; one duly authorized to treat diseases, especially by medicines; a Doctor of Medicine; often distinguished from a surgeon. "*Naprapathy*" is a scientific method of treating diseases, both chronic and acute, without drugs or surgery.—*People v. DeYoung*, 33 N.E.2d 610, 309 Ill.App. 525, affirmed 38 N.E.2d 22, 378 Ill. 256.

Iowa 1932. Defendant diagnosing and treating ailments by "*naprapathy*" or manipulation of connective tissue held engaged in "*practicing medicine and surgery*" within injunction statute (Code 1931, §§ 2519, 2538).—*State v. Howard*, 245 N.W. 871, 216 Iowa 545.—Inj 89(5).

Iowa 1932. "*Naprapathy*," not being recognized by statute, cannot be recognized by courts or administrative officers respecting applicability of statute authorizing injunction against practicing medicine without license (Code 1931, §§ 2519, 2538).—*State v. Howard*, 245 N.W. 871, 216 Iowa 545.—Inj 89(5).

Iowa 1932. That defendant, stating desire to be examined for license to practice "*naprapathy*," requested information from health board, which sent copy of examiners' rules, did not estop state and administrative officers from enjoining defendant's practice (Code 1931, §§ 2519, 2538).—*State v. Howard*, 245 N.W. 871, 216 Iowa 545.—Inj 89(5).

Iowa 1932. Health board held unauthorized to examine defendant respecting qualifications to practice "*naprapathy*" (Code 1931, §§ 2519, 2538).—*State v. Howard*, 245 N.W. 871, 216 Iowa 545.—Health 157.

NARCOTIC

D.Minn. 1972. United States-Canadian convention of 1925 designating as extraditable crimes and offenses against the laws for the suppression of traffic in narcotics authorized extradition of convicts who escaped from Canadian prison after being convicted for the unlawful importation of marijuana, notwithstanding contention that marijuana (*cannabis sativa*) is not a "*narcotic*." Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 102(15, 16), 202, 401 et seq., 1002, 1010, 21 U.S.C.A. §§ 802(15, 16), 812, 841 et seq., 952, 960.—*In re Edmondson*, 352 F.Supp. 22.—Extrad 5.

Cal.App.2 Dist. 1950. Marijuana is a "*narcotic*" within meaning of statute prohibiting possession of

any narcotic except upon written prescription. Health and Safety Code, §§ 11001(h), 11500.—*People v. Rumley*, 222 P.2d 913, 100 Cal.App.2d 6.—Controlled Subs 9.

Cal.App. 4 Dist. 1978. For purposes of statute prohibiting possession of a narcotic in a state prison, marijuana is a "narcotic." West's Ann.Pen. Code, § 4573.6; West's Ann.Health & Safety Code, § 11032.—*People v. Wilson*, 148 Cal.Rptr. 47, 83 Cal.App.3d 982.—Controlled Subs 9.

Colo. 1973. Under statute proscribing the furnishing of, inter alia, any narcotic to a penitentiary inmate, marijuana is a "narcotic" though not, medically speaking, in the narcotic family. 1967 Perm. Supp., C.R.S., 40-7-58(2); C.R.S., '63, 48-5-1(14)(a).—*People v. Stevens*, 517 P.2d 1336, 183 Colo. 399.—Prisons 17.5.

Hawai'i 1972. Notwithstanding contention that marihuana is not a narcotic, scientifically defined, inasmuch as word "narcotic" in popular usage includes marihuana, inclusion of the drug marihuana within legislative definition of term "narcotic" instead of applying more precise usage favored by scientific community, is not unreasonable and arbitrary so as to violate constitutional guarantee of due process. HRS § 329-1.—*State v. Kantner*, 493 P.2d 306, 53 Haw. 327, 53 Haw. 371, certiorari denied 93 S.Ct. 287, 409 U.S. 948, 34 L.Ed.2d 218.—Const Law 258(3.1).

N.Y.City Ct. 1948. Special legislation relating to sale or possession of barbiturate drugs or preparations was legislative recognition that a barbiturate is not a "narcotic" within statute relating to fraud or deceit in obtaining a narcotic prescription. Penal Law, § 1747-b; Public Health Law, § 438, subd. 5.—*People on Complaint of Benedetto v. Wittpen*, 75 N.Y.S.2d 670, 190 Misc. 565.—Statut 220.

Pa.Super. 1974. A "narcotic" is a substance which produces insensibility or stupor.—*Com. v. Crockett*, 323 A.2d 257, 229 Pa.Super. 80.—Controlled Subs 9.

NARCOTIC ADDICT

N.Y.Sup.App.Term 1970. Alleged use by defendant of cocaine did not warrant finding that he was a "narcotic addict" as defined in section of Mental Hygiene Law defining a "narcotic addict" as a person who at time of examination is dependent on opium, heroin, morphine or any derivative or synthetic drug of that group who is in imminent danger of becoming dependent thereon. Mental Hygiene Law § 201, subd. 2.—*People v. Giorandino*, 310 N.Y.S.2d 421, 62 Misc.2d 926.—Chem Dep 12.

NARCOTIC ADDICTION

Cal.App. 2 Dist. 1956. "Narcotic addiction" in violation of Penal Code is a chronic rather than an ordinary acute offense, and one may be guilty of such offense at any time and place he is found so long as his character remains unchanged, though he is then and there innocent of any act demonstrating his character. West's Ann.Health & Safety Code,

§§ 11009, 11721.—*People v. Jaurequi*, 298 P.2d 896, 142 Cal.App.2d 555.—Controlled Subs 38.

NARCOTIC DRUG

C.A.9 (Cal.) 1963. Cocaine hydrochloride is a "narcotic drug" within statute making illegal the receiving, concealing, transporting and facilitating the transportation of illegally imported narcotic drugs. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C.A. § 174.—*Erwing v. U.S.*, 323 F.2d 674.—Controlled Subs 9.

C.A.2 (Conn.) 1966. Heroin is a derivative of opium and therefore is a "narcotic drug" within purview of section of Internal Revenue Code relating to narcotic drugs. 26 U.S.C.A. (I.R.C.1954) §§ 4704(a), 4731(a) (2).—*Trotter v. U.S.*, 359 F.2d 419, on remand 255 F.Supp. 55.—Int Rev 5259.

C.A.6 (Ky.) 1984. Cocaine, though pharmacologically classified as a nonnarcotic, central nervous system stimulant, is chemical derivative of coca leaves and, as such, comes within regulatory definition of "narcotic drug." Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 102(16), 202, 202(b)(2), 21 U.S.C.A. §§ 802(16), 812, 812(b)(2).—*U.S. v. Whitley*, 734 F.2d 1129.—Controlled Subs 9.

Ariz.App. Div. 2 1992. Felony-murder rule providing that person was guilty of first-degree murder if person committed "narcotics offense" and then, in course or furtherance of that offense, another person was killed did not apply where drug involved was marijuana which was not "narcotic drug" so that no "narcotics offense" could have occurred. A.R.S. §§ 13-1105, 13-3405, 13-3409.—*State v. Medina*, 836 P.2d 997, 172 Ariz. 287, review denied.—Homic 600.

Ariz.App. Div. 2 1992. Although cannabis is included in definition of "narcotic drug," for purposes of determining whether narcotics offense has been committed, marijuana is not included because "marijuana" and "cannabis" are statutorily distinct; marijuana refers to plant and cannabis refers to things derived from plant. A.R.S. §§ 13-105, subd. 19, 13-3401, 13-3401, subds. 4, 16, 13-3409.—*State v. Medina*, 836 P.2d 997, 172 Ariz. 287, review denied.—Controlled Subs 9.

Fla. 1953. With certain exceptions the plant "cannabis sativa", smoked in marijuana cigarettes, is within terms of statute making it unlawful for any person to possess, to have under his control, or to sell any "narcotic drug". F.S.A. §§ 398.02(12), 398.03, 398.22.—*Escobio v. State*, 64 So.2d 766.—Controlled Subs 9.

Iowa 1990. Methamphetamine is not "narcotic drug" and, thus, unlawful possession of methamphetamine is class D felony. I.C.A. §§ 204.101, subd. 18, 204.206, subd. 4, par. b, 204.401, subds. 1, 1, par. b.—*State v. Draper*, 457 N.W.2d 600, certiorari denied 111 S.Ct. 674, 498 U.S. 1025, 112 L.Ed.2d 666.—Controlled Subs 9.

Kan.App. 1981. Cocaine is a "narcotic drug" which is defined by statute as including coca leaves and any salt, compound, derivative or preparation

of coca leaves and any salt, compound, isomer, derivative or preparations thereof which is chemically equivalent or identical with any of those substances, but not including the decocanized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine. K.S.A. 65-4101(p).—*State v. Hermerding*, 626 P.2d 210, 5 Kan.App.2d 797.—Controlled Subs 9.

La. 1992. Dilaudid (Hydromorphone) is "narcotic drug" for purposes of sentencing given that its pharmacological properties are derivative of opium; overruling *Jenkins*, 573 So.2d 218. LSA-R.S. 40:961(23), 40:964, Schedule II, subd. A(1)(I), 40:967, subds. A(1), B.—*State ex rel. Marks v. Thompson*, 596 So.2d 193.—Controlled Subs 100(1).

Mo.App. W.D. 1995. Valium was not a "narcotic drug" for purpose of statute making stealing of narcotic drugs a felony. V.A.M.S. §§ 195.010(27), 570.030, subd. 3(3)(k).—*State v. Oris*, 892 S.W.2d 770, rehearing, transfer denied (wd# 48074).—Larc 23.

N.J. 1975. In prosecution for operating a motor vehicle while under the influence of a narcotic drug, the testimony presented at trial was more than sufficient to establish beyond a reasonable doubt that "methaqualone" a "good dosage" of which was found in defendant's urine, is a "narcotic drug" within the plain or generic meaning of that term, notwithstanding the absence of an express statement by state's expert witness that methaqualone is a narcotic drug. N.J.S.A. 39:4-50(a).—*State v. DiCarlo*, 338 A.2d 809, 67 N.J. 321.—Autos 355(6).

N.J.Co. 1972. Marihuana is not a "narcotic drug" within meaning of statute prohibiting operation of motor vehicle on any highway while having in possession any narcotic drug. R. 3:23-1 et seq.; N.J.S.A. 39:4-49.1.—*State v. Carus*, 286 A.2d 740, 118 N.J.Super. 159.—Autos 324.

N.Y.A.D. 2 Dept. 1992. Cocaine is a "narcotic drug," for purposes of conviction for criminal sale of controlled substance in third degree. McKinney's Penal Law §§ 220.00, subd. 7, 220.39, subd. 1; McKinney's Public Health Law § 3306, Schedule II(b)(4).—*People v. Lyons*, 588 N.Y.S.2d 303, 186 A.D.2d 273, leave to appeal denied 597 N.Y.S.2d 950, 81 N.Y.2d 888, 613 N.E.2d 982.—Controlled Subs 34.

N.C. 1967. Marijuana is a "narcotic drug," within statute making it unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as otherwise authorized. G.S. §§ 90-87(1, 9), 90-88.—*State v. Chavis*, 154 S.E.2d 340, 270 N.C. 306.—Controlled Subs 22.

Ohio App. 2 Dist. 1959. Paregoric, since it contains less than two grains of opium in each fluid ounce, is not a "narcotic drug" within meaning of statute providing that no person shall attempt to obtain a "narcotic drug" by use of a false name or the giving of a false address, and therefore indictment alleging that defendant unlawfully obtained paregoric by the giving of a false name failed to

charge a crime. R.C. §§ 3719.15, 3719.17.—*Folenius v. Eckle*, 164 N.E.2d 458, 109 Ohio App. 152, 10 O.O.2d 367.—Controlled Subs 37.

Okla.Crim.App. 1925. The court will take judicial notice that morphine is a "narcotic drug" within the definition of that term as contained in section 8886, Compiled Oklahoma Statutes 1921, 63 Okl.St. Ann. § 401 note.—*Smith v. State*, 240 P. 656, 32 Okla.Crim. 247.

S.C. 1992. Defendant's prior convictions of distribution of marijuana and possession with intent to distribute marijuana were not convictions relating to a "narcotic drug," and thus, defendant could not be sentenced as second offender under crack cocaine statute, despite another statute indicating an offense is second offense if person has been convicted of offense relating to narcotic drugs, marijuana, or hallucinogenic drugs; because of conflict between statutes, later, more specific crack cocaine statute definition must prevail. Code 1976, §§ 44-53-110, 44-53-375(B), 44-53-470.—*Rainey v. State*, 414 S.E.2d 131, 307 S.C. 150.—Sent & Pun 1257.

Tex.Crim.App. 1979. Marijuana is "narcotic drug." Vernon's Ann.C.C.P. art. 27.08; Vernon's Ann.P.C. art. 725b, §§ 13, 14.—*Few v. State*, 588 S.W.2d 578.—Controlled Subs 9.

Tex.Crim.App. 1956. Under statute which prohibits sale of narcotic drugs, defines narcotic drugs to mean, among other substances, cannabis and opium, defines cannabis as including variety known as marihuana, and defines opium as including morphine, codeine and heroin, sale of marihuana, morphine, codeine or heroin is a sale of a "narcotic drug." Vernon's Ann.P.C. art. 725b, §§ 1(12-14), 2(a).—*Gonzales v. State*, 293 S.W.2d 786, 163 Tex. Crim. 432.—Controlled Subs 34.

Tex.Crim.App. 1933. Indictment charging sale or possession of narcotic drug, without naming particular drug possessed or sold, held insufficient. The indictment was insufficient because Vernon's Ann.P.C. art. 725a, § 1 et seq., in defining the term "narcotic drug," includes many drugs specifically named, so that the term "narcotic drug" is a generic term.—*Baker v. State*, 58 S.W.2d 535, 123 Tex. Crim. 212.

Tex.Civ.App.—Eastland 1957. Pharmacist's conviction in federal court of offense of refilling barbiturate prescription did not constitute, under state statute providing for revocation of pharmacist's license if licensee had been convicted of illegal use, sale or transportation of narcotic drugs, a conviction for illegal sale of "narcotic drug," and federal conviction did not justify revocation of pharmacist's license. Vernon's Ann.Civ.St. art. 4542a, § 12(g); Vernon's Ann.P.C. art. 725b, § 1.—*Garner v. Texas State Bd. of Pharmacy*, 304 S.W.2d 530, writ refused.—Controlled Subs 10; Health 211.

Vt. 1991. Substance may qualify as "narcotic drug" even though it is not designated as such by Board of Health regulations. 18 V.S.A. § 4201(16).—*State v. Metivier*, 596 A.2d 352, 157 Vt. 644.—Controlled Subs 9.

Wash. 1993. Cocaine was "narcotic drug," under state drug statute and, therefore, could form basis of conviction for offenses of delivery and conspiracy to deliver controlled substance which required substance to be both scheduled drug and narcotic, where cocaine was derivative of cocoa leaves.

West's RCWA 69.50.101(q), 69.50.401(a)(1)(i).—State v. Valdobinos, 858 P.2d 199, 122 Wash.2d 270.—Consp 28(3); Controlled Subs 34.

Wash. 1970. A "narcotic drug" is one which induces deep sleep and makes an individual insensitive to pain. (Per Rosellini, J., with Chief Justice and two justices concurring, and four justices concurring in result).—State v. Zornes, 475 P.2d 109, 78 Wash.2d 9.—Controlled Subs 9.

Wis. 1964. Paregoric is a "narcotic drug" within statute prohibiting persons from taking narcotic drugs habitually or excessively or except in pursuance to prescription. W.S.A. 161.01 et seq., 161.01(14), 161.02(3).—Browne v. State, 131 N.W.2d 169, 24 Wis.2d 491.—Controlled Subs 38.

NARCOTIC DRUGS

C.A.9 (Cal.) 1966. Percodan tablets, which contained one per cent of dihydrohydroxycodone hydrochloride, were "narcotic drugs". Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C.A. § 174; 26 U.S.C.A. (I.R.C.1954) § 4731(a).—Rivas v. U.S., 368 F.2d 703, certiorari denied 87 S.Ct. 980, 386 U.S. 945, 17 L.Ed.2d 875.—Controlled Subs 9; Int Rev 5259.

C.A.10 (Colo.) 1977. Term "narcotic drugs" as used in statute making it unlawful to sell any narcotic drug except pursuant to written order on a form to be issued in blank by Secretary of the Treasury or his delegate includes, as applied to cocaine, not only the substance produced by extraction from coca leaves but also substances produced independently by means of chemical synthesis which are chemically identical with substance obtained by extraction from coca leaves. 26 U.S.C.A. (I.R.C. 1954) §§ 4705(a), 4731, 7237.—U.S. v. Wilburn, 549 F.2d 734.—Int Rev 5259.

Miss. 1969. Possession of "marijuana" is prohibited by Uniform Narcotic Drug Act, which defines "narcotic drugs" as including, inter alia, "cannabis". Code 1942, §§ 6844–6866, 6845(13) (a), (14).—Davis v. State, 219 So.2d 678.—Controlled Subs 29.

Mo.App. 1973. For purposes of statutes authorizing search for and seizure of "narcotic drugs" and defining "narcotic drugs" as meaning specified substances and "any other drugs to which federal laws relating to narcotic drugs may now apply," "methamphetamine hydrochloride" was not a "narcotic drug," where it did not meet the qualification of a narcotic drug for federal purposes, though in federal schedules of "controlled substances" it was listed in the same schedule as certain narcotic drugs. Sections 195.010(17), 195.135 RSMo 1969, V.A.M.S.; Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 102(16), 202, 21

U.S.C.A. §§ 802(16), 812.—State v. Funk, 501 S.W.2d 526.—Controlled Subs 102.

R.I. 1976. "Any other drugs" proviso within Uniform Narcotic Drug Act provision, which defines "narcotic drugs," refers only to substances which, according to federal law in effect on April 27, 1954, were considered to be narcotic drugs. Pub.Laws 1954, c. 3329; Pub.Laws 1967, c. 31.—State v. Welch, 363 A.2d 1356, 117 R.I. 107.—Controlled Subs 29.

Vt. 1991. Coca leaves, their derivatives and substances neither chemically nor physically distinguishable from them, are "narcotic drugs" and, therefore, regulated drugs. 18 V.S.A. § 4201(16).—State v. Metivier, 596 A.2d 352, 157 Vt. 644.—Controlled Subs 9.

NARCOTIC * * * ESTABLISHMENT

D.C.App. 1970. Illegal "narcotic * * * establishment" is not merely place where addicts may be present, but is place where pushers, addicts and unaddicted neophytes can easily transact business, and thus effect of statute making it crime to knowingly be present in such establishment on status of being addicted to narcotics is merely incidental to statute's major thrust against narcotics traffic, and elimination of such establishments was proper subject for Congressional action. D.C.C.E. § 22–1515(a).—U. S. v. McClough, 263 A.2d 48, reversed Holly v. U.S., 464 F.2d 796, 150 U.S.App. D.C. 287.—Vag 1.

NARCOTIC LAW

La. 1942. The Federal Harrison Narcotic Drug Act is not a "narcotic law", but a "revenue law". Harrison Anti-Narcotic Act § 1 et seq., 26 U.S.C.A.Int.Rev.Code, § 2550 et seq.—State v. Vaccaro, 8 So.2d 299, 200 La. 475.—Int Rev 5259.

NARCOTIC OR MARIJUANA LAW

C.A.9 (Cal.) 1963. California statute providing that every person who agrees, consents or in any manner offers to sell, furnish, transport, administer or give any narcotic may be imprisoned is a "narcotic or marijuana law" within federal statute providing that one who has been convicted under such a law may not depart from or enter United States without registering. West's Ann.Cal. Health & Safety Code § 11503; 18 U.S.C.A. §§ 1407(a) 4208(a) (2).—Haserot v. U.S., 321 F.2d 582.—Controlled Subs 11.

NARCOTIC POTENTIAL

Cal.App. 2 Dist. 1968. When prosecution is for sale rather than for mere possession of narcotics, fact that parties treated amount delivered as being saleable quantity is evidence that it had requisite "narcotic potential" to sustain conviction. West's Ann.Health & Safety Code, § 11501.—People v. Blackshear, 67 Cal.Rptr. 662, 261 Cal.App.2d 65.—Controlled Subs 82.

NARCOTICS

Colo. 1971. Term "narcotics" includes marijuana, and seizure of marijuana under warrant authorizing search for "narcotics, dangerous drugs, and narcotics paraphernalia" was authorized under such warrant. C.R.S. '63, 48-5-1(14) (a).—*People v. Henry*, 482 P.2d 357, 173 Colo. 523.—Controlled Subs 154.

D.C. 1979. Term "narcotics," as used in federal and state laws, is not a scientific term, and, thus, though cocaine is not a true narcotic, it may be classified as such.—*Johnson v. U. S.*, 401 A.2d 985.—Controlled Subs 9.

N.C. 1936. The word "narcotics," as used in provisions in accident policies, excluding liability for injury or death while under the influence of narcotics, means that the insured has used drugs to such an extent as to disturb the action of his mental or physical faculties, and that his sense of responsibility is substantially or materially impaired.—*Wilson v. Inter-Ocean Casualty Co.*, 188 S.E. 102, 210 N.C. 585.

NARCOTICS LAW

S.D.Cal. 1960. Statute providing that no United States citizen who is addicted to or uses narcotic drugs or who has been convicted of a violation of any narcotics laws of United States or of any state for which penalty is imprisonment for more than one year shall depart from or enter into United States unless such person registers with a customs official at point of entry or a border customs station is a "narcotics law" of the United States and a person convicted of a violation of such statute by failing to register as a "user" of narcotics must follow its registration requirements. 18 U.S.C.A. § 1407.—*U.S. v. Bologna*, 181 F.Supp. 706, affirmed 287 F.2d 559.—Crim Law 1222.1.

NARCOTICS OFFENSE

Ariz.App. Div. 2 1992. Felony-murder rule providing that person was guilty of first-degree murder if person committed "narcotics offense" and then, in course or furtherance of that offense, another person was killed did not apply where drug involved was marijuana which was not "narcotic drug" so that no "narcotics offense" could have occurred. A.R.S. §§ 13-1105, 13-3405, 13-3409.—*State v. Medina*, 836 P.2d 997, 172 Ariz. 287, review denied.—Homic 600.

NARR AND COGNOVIT LAW

Tex.Civ.App.—Fort Worth 1929. "Narr and cognovit law" authorizes judgment on notes by attorney's confession that amount thereof, together with interest and costs, constitutes legal and just claim.—*Dyer v. Johnson*, 19 S.W.2d 421, writ dismissed w.o.j.—Judgm 54.

NARRATIVE CRITERIA

C.A.D.C. 1993. Environmental Protection Agency (EPA) rule requiring writers of pollution discharge permits to use one of three methods to interpret state water quality standards containing

"narrative criteria," so as to create precise, chemical-specific, effluent limitations in those permits, did not contravene unambiguously conveyed intent of Congress on theory that it required states to cede standard-setting authority to unaccountable bureaucrats and altered statutorily created balance of state and federal power. Federal Water Pollution Control Act Amendments of 1972, §§ 101(a), 301, 301(a), (b)(1)(A, C), 303(a-c), (c)(1, 2), 401(a)(1), 402, 402(a-d), 502(14), as amended, 33 U.S.C.A. §§ 1251(a), 1311, 1311(a), (b)(1)(A, C), 1313(a-c), (c)(1, 2), 1341(a)(1), 1342, 1342(a-d), 1362(14).—*American Paper Institute, Inc. v. U.S. E.P.A.*, 996 F.2d 346, 302 U.S.App.D.C. 80.—*Environ Law* 190.

NARRATIVE DECLARATION

C.C.A.2 (N.Y.) 1942. In prosecution for conspiracy to violate Bankruptcy Act by concealing assets from trustee in bankruptcy of bankrupt corporation by transferring assets of such corporation in contemplation of its bankruptcy and with intent to defeat the act, and by concealing, mutilating, and falsifying books and records of bankrupt corporation, testimony of president of bankrupt corporation who was an alleged coconspirator that defendant had been a partner in bankrupt's business constituted merely a "narrative declaration" of a past fact and was improperly admitted. Bankr. Act § 29, sub. b, 11 U.S.C.A. § 52, sub. b; Cr. Code § 37, 18 U.S.C.A. § 371.—*U.S. v. Goodman*, 129 F.2d 1009.—Crim Law 423(6).

NARRATIVE OF FACTS

La.App. 1 Cir. 1965. Written reasons for judgment as contained in record on appeal did not constitute "narrative of facts" required by statute providing that where testimony of witnesses has not been taken down in writing, appellant must request other parties to join with him in written and signed narrative of facts. LSA-C.C.P. art. 2131.—*Cothren v. Cothren*, 177 So.2d 129.—App & E 552.

NARRATIVE POEM

C.C.A.9 (Cal.) 1941. Doggerel verse entitled "Plain Bull" describing a cowboy's attempt to brand a maverick bull, having action in plenty but lacking dialogue and perceptible plot, was a "narrative poem" and not a "dramatic work" within terms of statute giving copyright owner exclusive right to any record whatsoever thereof. Copyright Act 1909, § 1(d), 17 U.S.C.A. § 1(d).—*Corcoran v. Montgomery Ward & Co.*, 121 F.2d 572, certiorari denied 62 S.Ct. 300, 314 U.S. 687, 86 L.Ed. 550.—Copyr 65.

NARRATIVE STATEMENT OF FACTS

Tex.App.—Austin 1993. Utility's motion offering agency record into evidence, and orders admitting record into evidence and transmitting original agency record to appellate court constituted "narrative statement of facts" for purposes of Texas Water Commission's motion to supplement narrative statement of facts with agency record. Rules App. Proc., Rules 53(i), 55(b).—*Texas Water Com'n v.*

Lakeshore Utility Co., Inc., 865 S.W.2d 615.—Admin Law 676; Waters 203(12).

NARROW

S.D.N.Y. 2001. Arbitration clause is “broad,” so as to give rise to presumption of arbitrability, if language of clause, taken as whole, evidences parties’ intent to have arbitration serve as the primary recourse for disputes connected to agreement which contains clause; it is “narrow” if the language indicates that arbitration was designed to play a more limited role in any future disputes.—In re Winimo Realty Corp., 276 B.R. 334.—Arbit 23.10.

N.Y.A.D. 2 Dept. 1995. Arbitration clause in contract between landlord and tenant was “narrow” rather than “broad” in scope, and it was therefore incumbent upon court to determine effect of any abandonment or modification of clause before permitting matter to proceed to arbitration; clause called for arbitration only of disputes relating to certain payments made under lease, and did not call for arbitration of all disputes arising out of contract, its interpretation, performance or breach to be submitted to arbitration.—We’re Associates, Inc. v. International Business Machines Corp., 633 N.Y.S.2d 180, 220 A.D.2d 752.—Land & Ten 201.

NARROW ARBITRATION CLAUSE

S.D.N.Y. 1995. “Broad arbitration clause” purports to refer to arbitration all disputes arising out of contract, while “narrow arbitration clause” limits arbitration to specific type of dispute.—National Titanium Dioxide Co., Ltd. v. Velco Enterprises, Ltd., 879 F.Supp. 372.—Arbit 7.

S.D.N.Y. 1993. “Broad arbitration clause” purports to refer all disputes arising out of contract to arbitration, while “narrow arbitration clause” confines arbitration to specific kinds of dispute.—Wilson v. Subway Sandwiches Shops, Inc., 823 F.Supp. 194.—Arbit 7.5.

Mo.App. W.D. 2002. A “broad arbitration clause” covers all disputes arising out of a contract to arbitrate, while a “narrow arbitration clause” limits arbitration to specific types of disputes.—Estate of Athon v. Conesco Finance Servicing Corp., 88 S.W.3d 26, rehearing, transfer denied, and transfer denied.—Arbit 7.1.

NARROW ARBITRATION CLAUSES

S.D.N.Y. 1991. In trying to decide scope of arbitration provisions of contract under Federal Arbitration Act, courts have distinguished between narrow and broad arbitration clauses; “broad arbitration clauses” purport to refer all disputes arising out of contract to arbitration, while “narrow arbitration clauses” limit arbitration to specific types of dispute. 9 U.S.C.A. § 1 et seq.—Stena Line (U.K.) Ltd. v. Sea Containers Ltd., 758 F.Supp. 934.—Arbit 7.5.

NARROW CERTIORARI

Pa. 1985. Review available on actions in nature of mandamus addressed to Commonwealth Court’s original jurisdiction, where plaintiff seeks to compel

action of an agency, is extremely limited; it is review by what was once known as “narrow certiorari.”—Baker v. Com., Pennsylvania Human Relations Com’n, 489 A.2d 1354, 507 Pa. 325.—Mand 172.

Pa.Cmwlth. 2001. The “narrow certiorari” scope of review limits a reviewing court to questions regarding: (1) the jurisdiction of the arbitrators; (2) the regularity of the proceedings; (3) an excess of the arbitrator’s powers; and (4) deprivation of constitutional rights.—City of Philadelphia v. Fraternal Order of Police, Lodge No. 5, 777 A.2d 1206.—Arbit 73.7(1).

Pa.Cmwlth. 1996. Appellate court’s scope of review of grievance arbitration award under Collective Bargaining by Policemen and Firemen Act is in nature of “narrow certiorari,” which limits reviewing court to questions regarding jurisdiction of arbitrators, regularity of proceedings, excess of arbitrator’s powers, and deprivation of constitutional rights. 43 P.S. §§ 217.1–217.10.—City of Philadelphia v. Fraternal Order of Police Lodge No. 5, 677 A.2d 1319, appeal withdrawn 682 A.2d 312, 545 Pa. 681.—Labor 483.

Pa.Cmwlth. 1995. “Narrow certiorari” scope of review of arbitrator’s award limits reviewing court to questions regarding: (1) jurisdiction of arbitrators; (2) regularity of proceedings; (3) excess of arbitrator’s powers; and (4) deprivation of constitutional rights.—City of Philadelphia v. Fraternal Order of Police Lodge No. 5, 658 A.2d 453.—Arbit 73.7(1).

Pa.Cmwlth. 1993. Review of arbitration awards in disputes between firemen and policemen and their public employers is in nature of “narrow certiorari,” which is limited to: (1) questions of jurisdiction, (2) regularity of proceeding, (3) questions of excess in exercise of powers, and (4) constitutional questions; such review does not include review of questions of law or errors of law.—Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 635 A.2d 222, 160 Pa.Cmwlth. 409, appeal denied 645 A.2d 1319, 538 Pa. 616.—Labor 480, 483.

NARROW CHANNEL

C.A.5 (La.) 1994. Remand was required in admiralty collision case for explicit findings and determination of whether 1,200 foot wide span between bridge pilings on Mississippi River was “narrow channel” for purposes of Inland Navigational Rules Act. 33 U.S.C.A. §§ 2009, 2009(a).—Marine Transport Lines, Inc. v. M/V Tako Invader, 37 F.3d 1138, appeal after remand 66 F.3d 320.—Collision 153.

C.C.A.9 (Cal.) 1942. The Columbia river between Cottonwood Island and Prescott, Ore., is a “narrow channel” within meaning of Inland Rule requiring vessels in narrow channels to keep to starboard when safe and practicable. Inland Rules, art. 25, 33 U.S.C.A. § 210.—Luckenbach S.S. Co. v. Societa Anonima Partecipazioni Industriali Commerciali, 127 F.2d 86, certiorari denied 63 S.Ct. 37, 317 U.S. 644, 87 L.Ed. 519.—Collision 91.

C.C.A.1 (Mass.) 1932. Mystic river, including passageways under Chelsea Bridge, North, connecting Chelsea and Charlestown, Mass., held "narrow channel" within rule requiring steam vessels to keep to starboard (Inland Rules, art. 25 (33 USCA 210)). Evidence showed that when draw of bridge in question was opened, it swung on pivot located on pier in middle of stream; that such pier was 525 feet in length; and that passageways on either side of pier were each 125 feet wide. Inland Rules, art. 25 (33 USCA 210), provides that in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of fairway or mid-channel which lies on starboard side of vessel.—*The Priscilla*, 55 F.2d 32, certiorari dismissed *Doane-Commercial Towing Co v. Mexican Petroleum Corporation*, 57 S.Ct. 756, 296 U.S. 669.—Collision 90.

C.C.A.1 (Mass.) 1932. Southern portion of fairway of Mystic river under Chelsea Bridge, North connecting Chelsea and Charlestown, Mass., held not separate "narrow channel" within rule requiring steam vessels to keep to starboard (Inland Rules, art. 25 (33 USCA 210)).—*The Priscilla*, 55 F.2d 32, certiorari dismissed *Doane-Commercial Towing Co v. Mexican Petroleum Corporation*, 57 S.Ct. 756, 296 U.S. 669.—Collision 90.

C.C.A.2 (N.Y.) 1924. Ambrose Channel held "narrow channel," within Inland Rules.—*The Munaïres*, 1 F.2d 13.—Collision 90.

C.C.A.9 (Or.) 1943. The Willamette river channel is a "narrow channel" within inland water rule requiring steam vessels to keep to the starboard side of the fairway or midchannel. Inland Rules art. 25, 33 U.S.C.A. § 210.—*The Pennsylvanian*, 139 F.2d 478.—Collision 91.

S.D.Ala. 1975. The "narrow channel" rule requires vessels meeting end on or nearly so to pass port to port; however, there are three exceptions: (1) local custom, (2) special rules and (3) special circumstances making the normal mode of passing unsafe.—*Walker v. Sabine Towing & Transp. Co., Inc.*, 399 F.Supp. 995.—Collision 91, 106.

D.Alaska Terr. 1952. Tongass Narrows, connecting with Ketchikan Harbor, is a "narrow channel" within meaning of statute requiring vessels in such channel to keep to starboard side of mid-channel. 33 U.S.C.A. § 210.—*Atlas Assur. Co., Ltd. of London, England v. The Cupid*, 14 Alaska 108, 108 F.Supp. 590.—Collision 91.

D.Alaska Terr. 1949. Ulloa Channel which was on western side of Prince of Wales Island, Alaska, and whose only traffic was up and down in opposite directions was "narrow channel" within Inland Rule requiring steam vessel in "narrow channel" to keep to that side of fairway or midchannel which lies on starboard side of such vessel, and hence oil screw or vessel attempting without assenting signal and at risk of collision to pass approaching fishing vessel on left instead of right assumed risk of all consequences. Inland Rules, art. 25, 33 U.S.C.A. § 210.—*Johnson v. Nakat Packing Corp*, 12 Alaska 449, 85 F.Supp. 230.—Collision 91.

E.D.La. 1963. The gulf intracoastal waterway was "narrow channel" within inland navigation rule requiring steam vessel in narrow channel to keep to that side of fairway or mid-channel which lies on starboard side of vessel, where only 150 feet of the 250 foot width of canal was usable as a channel for vessels. Inland Rules, art. 25, 33 U.S.C.A. § 210.—*Lee v. Candies*, 216 F.Supp. 665, affirmed 323 F.2d 363.—Collision 90.

D.Mass. 1939. A channel 1,200 feet wide was a "narrow channel" within inland rule requiring steam vessels in narrow channels to keep to starboard side. Inland Rules, art. 25, 33 U.S.C.A. § 210.—*The Trim*, 30 F.Supp. 283, affirmed *General Seafoods Corp. v. J. S. Packard Dredging Co.*, 120 F.2d 117.—Collision 91.

N.D.Miss. 1969. Where channel at bend of Mississippi River at point of collision between 26-barge tow having overall length of 1,107 feet and width of 174 feet and 195-foot long by 50-foot wide barge being pushed by 60-foot long towboat was in vicinity of 300 to 400 feet, area constituted a "narrow channel" for purpose of applying Narrow Channel Rule of Pilot Rules for Western Rivers. 33 U.S.C.A. § 210.—*Sportsmen's Enterprises, Inc. v. Union Barge Line Corp.*, 306 F.Supp. 1376.—Collision 90.

S.D.N.Y. 1963. One does not look to the mere physical dimensions of area in order to determine whether it is a "narrow channel" within Inland Rule providing that in narrow channels vessel shall, when it is safe and practicable, keep to that side of fairway or mid-channel which lies on starboard side of such vessel, but rather the character of navigating use to which the water is put. Inland Rules, art. 25, 33 U.S.C.A. § 210.—*Skibs A/S Siljestad v. S/S Mathew Luckenbach*, 215 F.Supp. 667, affirmed 324 F.2d 563.—Collision 90.

E.D.Pa. 1960. A 300-foot channel is a "narrow channel" for purposes of Inland Rule requiring steam vessel to keep to that side of fairway or mid-channel which lies on starboard side of such vessel. Inland Rules, art. 25, 33 U.S.C.A. § 210.—*Barge Lake Farge Corp. v. The Saxon*, 183 F.Supp. 132, affirmed *Saxon S.S. Co. v. The Anna Sheridan*, 286 F.2d 247.—Collision 91.

E.D.Pa. 1955. Stretch of Delaware River having width of 1,000 feet and depth of 37 feet was a "narrow channel" within meaning of Inland Rule providing that in "narrow channels" every steam vessel shall, when it is safe and practicable, keep to side of fairway or mid-channel which lies on starboard side of such vessel. Inland Rules, art. 25, 33 U.S.C.A. § 210.—*Tug New York Co. v. The Robin Doncaster*, 130 F.Supp. 136.—Collision 90.

E.D.Va. 1967. Even if eastern opening of Lesner Bridge at Lynnhaven Inlet, Virginia Beach, Virginia under which yacht was proceeding seaward when struck on starboard side by government vessel which had approached at about 45-degree angle from northeast constituted a "narrow channel," it was "practicable" for the yacht to enter the opening on the port half of the same, considering government vessel's distance to the north when the yacht

entered the opening, within navigation rule providing that in narrow channels every steam vessel shall, when it is safe and practicable, keep to the side lying on the starboard. Inland Rules of Navigation, art. 25, 33 U.S.C.A. § 210.—*Tempest v. U.S.*, 277 F.Supp. 59, affirmed 404 F.2d 870.—*Collision* 91.

NARROW CHANNEL RULE

E.D.Va. 1967. Article 25 of the Inland Rules of Navigation is generally known as the "Narrow Channel Rule." Inland Rules of Navigation, art. 25, 33 U.S.C.A. § 210.—*Tempest v. U.S.*, 277 F.Supp. 59, affirmed 404 F.2d 870.—*Collision* 90.

NARROW CHANNELS

E.D.Pa. 1955. Stretch of Delaware River having width of 1,000 feet and depth of 37 feet was a "narrow channel" within meaning of Inland Rule providing that in "narrow channels" every steam vessel shall, when it is safe and practicable, keep to side of fairway or mid-channel which lies on starboard side of such vessel. Inland Rules, art. 25, 33 U.S.C.A. § 210.—*Tug New York Co. v. The Robin Doncaster*, 130 F.Supp. 136.—*Collision* 90.

NARROW CONDUCT THEORY

C.A.10 (Kan.) 2002. In determining the date on which a claim arose, for purposes of classifying it as a pre- or post-petition claim, "narrow conduct theory" holds that a claim arises at the time of conduct only if the claimant had a specific relationship with the debtor at the time the conduct occurred. Bankr.Code, 11 U.S.C.A. § 362(a)(1); 11 U.S.C.(1988 Ed.) § 101(4)(A).—*In re Parker*, 313 F.3d 1267.—*Bankr* 2832.1.

NARROW DEFINITION OF FORGERY

Va. 1967. The "narrow definition of forgery" is that it is the making or altering of a document with intent to defraud or prejudice another so as to make it appear to be the document made by another. Code 1950, § 18.1-96.—*Moore v. Com.*, 153 S.E.2d 231, 207 Va. 838.—*Forg* 1.

NARROWING

Cal. 1993. "Narrowing" in context of capital sentencing pertains to state's legislative definition of circumstances that place defendant within class of persons eligible for death penalty and, to comport with requirements of Eighth Amendment, legislative definition must circumscribe class of persons eligible for death penalty, and must afford some objective basis for distinguishing case in which death penalty has been imposed from many cases in which it has not; if definition lacks narrowing principle, and has no objective basis for appellate review, it is deemed to be impermissibly vague under Eighth Amendment. U.S.C.A. Const. Amend. 8.—*People v. Bacigalupo*, 862 P.2d 808, 24 Cal.Rptr.2d 808, 6 Cal.4th 457, certiorari denied *Bacigalupo v. California*, 114 S.Ct. 2782, 512 U.S. 1253, 129 L.Ed.2d 894, rehearing denied 115 S.Ct. 26, 512 U.S. 1278, 129 L.Ed.2d 924.—*Sent & Pun* 1618.

NARROW INTERPRETATION

Colo. 1933. That interpretation of statute which, brushing aside minor objections and trivial technicalities, effectuates intent of act, is "broad interpretation," and that which, regarding such objections and technicalities, fails to do so, is "narrow interpretation."—*In re Senate Resolution No. 2 Concerning Constitutionality of House Bill No. 6*, 31 P.2d 325, 94 Colo. 101.—*Statut* 174.

Colo. 1933. That interpretation of Constitution which, brushing aside minor objections and trivial technicalities, effectuates intent of act, is "broad interpretation," and that which, regarding such objections and technicalities, fails to do so, is "narrow interpretation."—*In re Senate Resolution No. 2 Concerning Constitutionality of House Bill No. 6*, 31 P.2d 325, 94 Colo. 101.—*Const Law* 13.

NARROWLY CONSTRUED

U.S.Cal. 1950. That penal statutes are "narrowly construed" does not require rejection of sense of words best harmonizing with context and end in view.—*U.S. v. Alpers*, 70 S.Ct. 352, 338 U.S. 680, 94 L.Ed. 457.—*Statut* 241(1).

NARROWLY DRAWN

C.A.8 (Mo.) 1993. Content-based restriction on free speech is "narrowly drawn" to achieve legitimate governmental end only if it is the least restrictive alternative available. U.S.C.A. Const.Amend. 1.—*Gilleo v. City of Ladue*, 986 F.2d 1180, certiorari granted 114 S.Ct. 55, 510 U.S. 809, 126 L.Ed.2d 24, affirmed 114 S.Ct. 2038, 512 U.S. 43, 129 L.Ed.2d 36.—*Const Law* 90(3).

Ill. 1996. Requirement under *Central Hudson Gas* test for regulations of commercial speech that restriction on speech be "narrowly drawn" does not indicate application of overbreadth doctrine or least restrictive means test; what is required is "fit" between Legislature's ends and means chosen to accomplish those ends that is not necessarily perfect, but reasonable, that represents not necessarily single best disposition but one whose scope is in proportion to interest served, and that employs not necessarily least restrictive means but means narrowly tailored to achieve desired objective. U.S.C.A. Const.Amend. 1.—*Desnick v. Department of Professional Regulation*, 216 Ill.Dec. 789, 665 N.E.2d 1346, 171 Ill.2d 510, rehearing denied, certiorari denied 117 S.Ct. 390, 519 U.S. 965, 136 L.Ed.2d 306.—*Const Law* 90.2.

NARROWLY DRAWN STATUTES

C.A.4 (Md.) 1973. The statute pertaining to obstruction of justice and the statute pertaining to conspiracy are not "narrowly drawn statutes" within exception to the "speech or debate" clause for proof received in prosecution under narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members. U.S.C.A.Const. art. 1, § 6, cl. 1; 18 U.S.C.A. §§ 371, 1505.—*U.S. v. Dowdy*, 479 F.2d 213, certiorari denied 94 S.Ct. 124, 414 U.S. 823, 38 L.Ed.2d 56, rehearing denied 94 S.Ct. 851, 414 U.S.

1117, 38 L.Ed.2d 744, certiorari denied 94 S.Ct. 132, 414 U.S. 866, 38 L.Ed.2d 118, rehearing denied 94 S.Ct. 851, 414 U.S. 1117, 38 L.Ed.2d 745.—U S 12.

C.A.4 (Md.) 1973. The conflict of interest statute, statute prohibiting interstate travel to facilitate federal bribery and the federal bribery statute were not “narrowly drawn statutes” within exception to the “speech or debate” clause for prosecutions under a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members. U.S.C.A.Const. art. 1, § 6, cl. 1; 18 U.S.C.A. §§ 201, 203, 1952.—U.S. v. Dowdy, 479 F.2d 213, certiorari denied 94 S.Ct. 124, 414 U.S. 823, 38 L.Ed.2d 56, rehearing denied 94 S.Ct. 851, 414 U.S. 1117, 38 L.Ed.2d 744, certiorari denied 94 S.Ct. 132, 414 U.S. 866, 38 L.Ed.2d 118, rehearing denied 94 S.Ct. 851, 414 U.S. 1117, 38 L.Ed.2d 745.—U S 12.

NARROWLY TAILORED

U.S.N.Y. 1989. Time, place, or manner regulation is “narrowly tailored” to serve government’s legitimate content-neutral interest, as long as means chosen are not substantially broader than necessary to achieve government’s interest; it is immaterial that government’s interest might be adequately served by some less-speech-restrictive alternative. U.S.C.A. Const.Amend. 1.—Ward v. Rock Against Racism, 109 S.Ct. 2746, 491 U.S. 781, 105 L.Ed.2d 661, rehearing denied 110 S.Ct. 23, 492 U.S. 937, 106 L.Ed.2d 636.—Const Law 90(3).

U.S.Wis. 1988. Statute is “narrowly tailored,” for First Amendment purposes, if it targets and eliminates no more than exact source of evil it seeks to remedy; complete ban can be narrowly tailored but only if each activity within proscription’s scope is appropriately targeted evil. U.S.C.A. Const.Amend. 1.—Frisby v. Schultz, 108 S.Ct. 2495, 487 U.S. 474, 101 L.Ed.2d 420, on remand 857 F.2d 1175, appeal after remand 877 F.2d 6, rehearing denied.—Const Law 90(3).

C.A.3 (Del.) 1993. Requirement for narrow tailoring restriction on speech, that “least restrictive means” of obtaining objective be followed, does not apply when content-neutral time, place and manner restrictions are at issue; rather such restrictions are “narrowly tailored” so long as regulation promotes substantial government interest that would be achieved less effectively absent regulation. U.S.C.A. Const.Amend. 1.—Mitchell v. Commission on Adult Entertainment Establishments of State of Del., 10 F.3d 123.—Const Law 90(3).

C.A.7 (Ind.) 2002. For purpose of analysis whether portion of city’s sexually-oriented businesses ordinance regulating the outward appearance of such businesses was a proper time, place, or manner regulation of expression, the ordinance’s restrictions would be “narrowly tailored” if they advanced a substantial interest that would be achieved less effectively absent the restrictions, and the restrictions did not burden substantially more speech than was necessary for such advancement, but narrow tailoring would not require the restric-

tions to be the least restrictive means of serving the city’s content neutral interests. U.S.C.A. Const. Amend. 1.—Pleasureland Museum, Inc. v. Beutter, 288 F.3d 988.—Const Law 90.4(1).

C.A.7 (Ind.) 2002. For purpose of analysis whether portion of city’s sexually-oriented businesses ordinance regulating the outward appearance of such businesses was a proper time, place, or manner regulation of expression, subportions of the ordinance regulating font and color of such a business’s primary sign, and requiring exterior of such a business establishment to be painted in a single achromatic color, were sufficiently “narrowly tailored” to serve the city’s significant interests in preventing a decline in the values of surrounding properties. U.S.C.A. Const.Amend. 1.—Pleasureland Museum, Inc. v. Beutter, 288 F.3d 988.—Const Law 90.3, 90.4(1); Theaters 3.

C.A.7 (Ind.) 2002. For purpose of analysis whether portion of city’s sexually-oriented businesses ordinance regulating the outward appearance of such businesses was a proper time, place, or manner regulation of expression, subportion of the ordinance which limited signage to only the legal name of the enterprise was not sufficiently “narrowly tailored,” because it was substantially broader than necessary to achieve the city’s goals of combating deleterious secondary effects such as urban blight and a decline in property values; the business would not even be allowed to notify the public about what type of store it operated or what its hours of operation were. U.S.C.A. Const.Amend. 1.—Pleasureland Museum, Inc. v. Beutter, 288 F.3d 988.—Const Law 90.3; Theaters 3.

C.A.7 (Ind.) 2002. For purpose of analysis whether open-booth portion of city’s sexually-oriented businesses ordinance, which required an unobstructed view from a manager’s station of every area of the premises to which any patron was permitted access, excluding restrooms, was a proper time, place, or manner regulation of expression, the open-booth restriction was sufficiently “narrowly tailored” to meet city’s legitimate goals of preventing the spread of disease and maintaining sanitary and safe conditions at sexually-oriented businesses, even though less restrictive alternatives such as video cameras or roaming security guards might accomplish the goals as effectively. U.S.C.A. Const.Amend. 1.—Pleasureland Museum, Inc. v. Beutter, 288 F.3d 988.—Const Law 90.4(1); Theaters 3.20.

C.A.8 (Neb.) 2000. A “narrowly tailored” statute, for purposes of First Amendment free speech protections, targets and eliminates no more than the exact source of the evil it seeks to remedy; the statute need not be the least restrictive means of regulation, but it must further a significant government interest that would be achieved less effectively without the regulation. U.S.C.A. Const.Amend. 1.—Thorburn v. Austin, 231 F.3d 1114.—Const Law 90(3).

C.A.3 (N.J.) 1992. “Narrowly tailored” requirement limiting permitted First Amendment activities within designated public forum does not signify that

challenged rule must be least restrictive or least intrusive means of furthering government's interest; requirement is satisfied so long as regulation promotes substantial government interest that would be achieved less effectively absent the regulation. U.S.C.A. Const.Amend. 1.—*Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, rehearing denied.—Const Law 90.1(4).

C.A.4 (N.C.) 1993. That no unqualified candidate for promotion to police sergeant was considered for promotion, that officers who were denied promotion were only denied employment opportunity, not deprived of their existing jobs, and that 20% goal with respect to African-American police sergeants was reasonable in light of composition of African-American patrol officers on force and racial composition of city did not support conclusion that city's promotion policy based upon race was "narrowly tailored" for purpose of equal protection clause, where there was no evidence that city considered race-neutral alternatives to achieve diversity or that use of nondiscriminatory policy would not achieve its goal. U.S.C.A. Const.Amend. 14, 14, § 1.—*Hayes v. North State Law Enforcement Officers Ass'n*, 10 F.3d 207, appeal after remand *Price v. City of Charlotte, N.C.*, 93 F.3d 1241, certiorari denied 117 S.Ct. 1246, 520 U.S. 1116, 137 L.Ed.2d 328, certiorari denied 117 S.Ct. 1246, 520 U.S. 1116, 137 L.Ed.2d 328.—Const Law 219.1; *Mun Corp* 184.1.

C.A.5 (Tex.) 1999. Content-neutral regulation is "narrowly tailored," as is required under intermediate scrutiny test for First Amendment free speech challenge, when regulation does not burden substantially more speech than is necessary to further government's legitimate interests. U.S.C.A. Const. Amend. 1.—*Horton v. City of Houston, Tex.*, 179 F.3d 188, rehearing denied, certiorari denied 120 S.Ct. 530, 528 U.S. 1021, 145 L.Ed.2d 411.—Const Law 90(3).

S.D.Ala. 2000. To be "narrowly tailored," means selected in statute otherwise restricting exercise of First Amendment rights must bear sufficiently close relation to governmental interest advanced and must not unnecessarily infringe on First Amendment rights. U.S.C.A. Const.Amend. 1.—*Richey v. Tyson*, 120 F.Supp.2d 1298.—Const Law 82(3).

C.D.Cal. 1995. Restriction of First Amendment activity meets requirement of being "narrowly tailored," if it targets and eliminates no more than exact source of the evil it seeks to remedy. U.S.C.A. Const.Amend. 1.—*Edwards v. City of Santa Barbara*, 883 F.Supp. 1379, vacated 70 F.3d 1277, appeal after remand 150 F.3d 1213, certiorari denied 119 S.Ct. 1142, 526 U.S. 1004, 143 L.Ed.2d 209, certiorari denied 119 S.Ct. 1142, 526 U.S. 1004, 143 L.Ed.2d 209.—Const Law 90(3).

S.D.Fla. 1999. Restriction on speech protected by First Amendment is "narrowly tailored" if its effect on First Amendment freedoms is essential to further substantial government interest that caused incidental interference with free speech rights. U.S.C.A. Const.Amend. 1.—*University Books and*

Videos, Inc. v. Metropolitan Dade County, 78 F.Supp.2d 1327.—Const Law 90(3).

S.D.Fla. 1994. Rule is "narrowly tailored," for purposes of First Amendment free speech analysis, as long as it promotes significant governmental interest that would be less effectively accomplished without it. U.S.C.A. Const.Amend. 1.—*Chad v. City of Fort Lauderdale, Fla.*, 861 F.Supp. 1057.—Const Law 90(3).

S.D.Fla. 1993. In examining public employer's affirmative action program under strict scrutiny test, court must determine whether plan is "narrowly tailored" to achieve a compelling state interest, by considering necessity for relief and efficacy of alternative remedies, flexibility and duration of relief, including availability of waiver provisions, relationship of numerical goals to relevant labor markets, and impact of relief on rights of third parties. U.S.C.A. Const.Amend. 14; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—*Peightal v. Metropolitan Dade County*, 815 F.Supp. 1454, affirmed 26 F.3d 1545.—Const Law 219.1.

D.Md. 1998. School district's policy of considering race in determining whether to approve voluntary requests for student transfers between elementary schools was "narrowly tailored" to achieve its compelling governmental interests, where policy did not single out any race for automatic approval or denial of transfers and imposed no quotas, no race-neutral alternative method would achieve governmental goals of diversity and avoidance of segregative enrollment patterns, and district closely monitored implementation of policy, updating it where necessary. U.S.C.A. Const.Amend. 14.—*Eisenberg v. Montgomery County Public Schools*, 19 F.Supp.2d 449, reversed 197 F.3d 123, certiorari denied 120 S.Ct. 1420, 529 U.S. 1019, 146 L.Ed.2d 312.—Const Law 220(6); *Schools* 13(14).

D.Neb. 1998. A statute restricting protected speech is "narrowly tailored," as required to be constitutional, if it targets and eliminates no more than the exact source of the "evil" it seeks to remedy. U.S.C.A. Const.Amend. 1.—*Olmer v. City of Lincoln*, 23 F.Supp.2d 1091, affirmed 192 F.3d 1176, rehearing and rehearing denied.—Const Law 90(3).

E.D.N.C. 1994. Factors which court may consider in deciding whether a race-based congressional redistricting plan is "narrowly tailored" to serve some legitimate governmental interest include: efficacy of alternative remedies; whether program imposes rigid racial "quota" or just flexible racial "goal"; planned duration of program; relationship between program's goal for minority representation in pool of individuals ultimately selected to receive benefit in question and percentage of minorities in relevant pool of eligible candidates; and impact of program on rights of innocent third parties. Voting Rights Act of 1965, § 2 et seq., as amended, 42 U.S.C.A. § 1973 et seq.; U.S.C.A. Const.Amend. 14, § 1.—*Shaw v. Hunt*, 861 F.Supp. 408, probable jurisdiction noted 115 S.Ct. 2639, 515 U.S. 1172, 132 L.Ed.2d 878, reversed 116 S.Ct. 1894, 517 U.S. 899, 135 L.Ed.2d 207.—Const Law 215.3.

D.N.D. 1994. Statute is "narrowly tailored," for First Amendment purposes, if it targets and eliminates no more than the exact source of the "evil" it seeks to remedy; thus, complete ban can be narrowly tailored, but only if each activity within the proscription's scope is an appropriately targeted evil. U.S.C.A. Const.Amend. 1.—*Copper v. City of Fargo*, 905 F.Supp. 680, supplemented 905 F.Supp. 703.—Const Law 90(3).

N.D.Tex. 1998. Law is "narrowly tailored," for purposes of First Amendment's free speech guarantee, when it does not burden substantially more speech than is necessary to further state's legitimate interests. U.S.C.A. Const.Amend. 1.—*Texas State Troopers Ass'n, Inc. v. Morales*, 10 F.Supp.2d 628.—Const Law 90(3).

S.D.Tex. 1994. State's redistricting plan which resulted in creation of voting districts which were so bizarrely shaped and so racially segregated that they amounted to racial apartheid was not "narrowly tailored" to serve state's interest in complying with Voting Rights Act particularly as less offensive alternatives were available. Voting Rights Act of 1965, § 2 et seq., as amended, 42 U.S.C.A. § 1973 et seq.; U.S.C.A. Const.Amend. 14, 15.—*Vera v. Richards*, 861 F.Supp. 1304, probable jurisdiction noted *Bush v. Vera*, 115 S.Ct. 2639, 515 U.S. 1172, 132 L.Ed.2d 877, affirmed 116 S.Ct. 1941, 517 U.S. 952, 135 L.Ed.2d 248.—Const Law 215.3; U S 10.

D.Vt. 2001. Requirement that regulation restricting protected speech be "narrowly tailored" is satisfied so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation. U.S.C.A. Const.Amend. 1.—*Howard Opera House Associates v. Urban Outfitters, Inc.*, 131 F.Supp.2d 559.—Const Law 90(3).

W.D.Va. 2001. A law is "narrowly tailored," for purposes of evaluating its constitutional validity under First Amendment, if it employs the least restrictive means to achieve its goal and if there is a nexus between the government's compelling interest and the restriction. U.S.C.A. Const.Amend. 1.—*PSI-NET, Inc. v. Chapman*, 167 F.Supp.2d 878, question certified 317 F.3d 413.—Const Law 82(3).

W.D.Va. 2000. A law is "narrowly tailored," so as to survive strict scrutiny of its constitutionality, if it employs the least restrictive means to achieve government's compelling interest and if there is a nexus between the interest and the restriction.—*PSINet, Inc. v. Chapman*, 108 F.Supp.2d 611.—Const Law 82(1).

Ariz.App. Div. 1 1997. Statute providing alternative structure for school governing board elections in event of allegations of racial discrimination was not "narrowly tailored" to serve any arguable compelling state interest, as it was capable of being implemented by school districts having no history of past racial discrimination. U.S.C.A. Const.Amend. 14; A.R.S. § 15-431.—*McComb v. Superior Court In and For County of Maricopa*, 943 P.2d 878, 189 Ariz. 518, as amended, and review denied.—Const Law 215.3; Schools 46.

Cal.App. 1 Dist. 2000. A content-based restriction on protected speech is "narrowly tailored," as required to withstand First Amendment scrutiny, only if the Legislature has chosen the least restrictive means to further the articulated interest. U.S.C.A. Const.Amend. 1.—*People v. Hsu*, 99 Cal. Rptr.2d 184, 82 Cal.App.4th 976, review denied.—Const Law 90(3).

Cal.App. 1 Dist. 2000. For a content-based governmental restriction on protected speech to be "narrowly tailored," as required to withstand First Amendment scrutiny, it must target and eliminate no more than the exact source of the evil it seeks to remedy. U.S.C.A. Const.Amend. 1.—*People v. Hsu*, 99 Cal. Rptr.2d 184, 82 Cal.App.4th 976, review denied.—Const Law 90(3).

Cal.App. 6 Dist. 1995. In order to pass constitutional muster, ordinance which affects First Amendment rights must be "narrowly tailored" to achieve specific end, which means that ordinance achieves substantial government interests that could not be achieved as effectively without regulation or injunction and does not require that regulation be least restrictive means of achieving end. U.S.C.A. Const.Amend. 1.—*City of San Jose v. Superior Court*, 38 Cal. Rptr.2d 205, 32 Cal.App.4th 330, rehearing denied, and review denied, certiorari denied *Thompson v. City of San Jose*, 116 S.Ct. 340, 516 U.S. 932, 133 L.Ed.2d 238.—Const Law 90(3).

Colo. 1995. Even a content-neutral restriction on speech must be "narrowly tailored," but narrow tailoring does not mean that regulation must be the least restrictive alternative; rather, regulation must promote substantial governmental interest that would be achieved less effectively absent the regulation. U.S.C.A. Const.Amend. 1.—*Denver Pub. Co. v. City of Aurora*, 896 P.2d 306, rehearing denied.—Const Law 90(3).

Colo.App. 1995. Government may use content-neutral statute to impose reasonable time, place and manner restrictions on speech, provided that the restrictions are "narrowly tailored," meaning that they limit free speech only to extent reasonably necessary to serve significant governmental interest, and that there are ample alternative channels for communication of the information. U.S.C.A. Const.Amend. 1.—*Hill v. City of Lakewood*, 911 P.2d 670, rehearing denied, and certiorari denied, certiorari granted, vacated 117 S.Ct. 1077, 519 U.S. 1145, 137 L.Ed.2d 213, on remand 949 P.2d 107, rehearing denied, and certiorari granted, affirmed 973 P.2d 1246, certiorari granted 120 S.Ct. 10, 527 U.S. 1068, 144 L.Ed.2d 841, affirmed 120 S.Ct. 2480, 530 U.S. 703, 147 L.Ed.2d 597.—Const Law 90(3).

D.C. 1993. Requirement that restrictions on time, place, or manner of protected speech must be "narrowly tailored" to serve significant governmental interest does not mean that government must grant access to all who wish to exercise their right to free speech in every type of government property without regard to nature of property or disruption that might be caused by speaker's activities.

U.S.C.A. Const.Amend. 1.—*Farina v. U.S.*, 622 A.2d 50.—Const Law 90.1(4).

Ohio 2001. A statute is “narrowly tailored” for due process purposes, if it targets and eliminates no more than the exact source of the evil it seeks to remedy. U.S.C.A. Const.Amend. 14.—*State v. Burnett*, 755 N.E.2d 857, 93 Ohio St.3d 419, 2001-Ohio-1581, reconsideration denied 758 N.E.2d 1149, 93 Ohio St.3d 1499, certiorari denied 122 S.Ct. 1790, 535 U.S. 1034, 152 L.Ed.2d 649.—Const Law 251.3.

Wash.App. Div. 2 1998. Ordinance which restricts protected speech is “narrowly tailored”, and thus may constitute valid time, place, and manner restriction under First Amendment, if it promotes a substantial government interest that would be achieved less effectively absent the ordinance. U.S.C.A. Const.Amend. 1.—*DCR, Inc. v. Pierce County*, 964 P.2d 380, 92 Wash.App. 660, review denied 980 P.2d 1283, 137 Wash.2d 1030, certiorari denied 120 S.Ct. 1553, 529 U.S. 1053, 146 L.Ed.2d 459, rehearing denied 120 S.Ct. 1999, 529 U.S. 1124, 146 L.Ed.2d 822.—Const Law 90(3).

NARROWLY TAILORED TEST

E.D.Pa. 1998. “Narrowly tailored test” for determining whether a prisoner was transferred to another facility in retaliation for exercising his constitutional rights keeps the ultimate burden on the prisoner, who must demonstrate that the transfer neither advanced legitimate goals of the correctional institution nor was narrowly tailored enough to achieve such goals; however, this burden is an extremely light one: a prisoner would only have to point to other, more narrowly tailored, means of advancing the stated goals in order to prevail.—*Castle v. Clymer*, 15 F.Supp.2d 640.—Prisons 13.5(1).

NARROW TAILORING

D.Conn. 1995. For purposes of prong of intermediate scrutiny test for content-neutral speech restrictions under First Amendment, that restriction be narrowly tailored to serve significant governmental interest, “narrow tailoring” requires that means chosen do not burden substantially more speech than is necessary to further government’s legitimate interests. U.S.C.A. Const.Amend. 1.—*Southern New England Telephone Co. v. U.S.*, 886 F.Supp. 211.—Const Law 90(3).

D.Hawaii 1999. Content-neutral regulation’s requirement of “narrow tailoring” is satisfied as long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation. U.S.C.A. Const. Amend. 1.—*Honolulu Weekly, Inc. v. Harris*, 79 F.Supp.2d 1186, reversed 298 F.3d 1037.—Const Law 90(3).

S.D.Tex. 1998. Regulation is “sufficiently well tailored” to meet the “narrow tailoring” requirement of First Amendment for content-neutral regulation of speech if it effectively promotes the government’s stated interest, and does not burden substantially more speech than necessary to further

those interests. U.S.C.A. Const.Amend. 1.—*N.W. Enterprises, Inc. v. City of Houston*, 27 F.Supp.2d 754.—Const Law 90(3).

Conn. 1996. Under First Amendment, when regulation is content-neutral, means chosen by government to further its substantial interests need not be the least restrictive or least intrusive means of doing so but, rather, requirement of “narrow tailoring” is satisfied so long as regulation promotes substantial government interest that would be achieved less effectively absent regulation. U.S.C.A. Const.Amend. 1.—*Morascini v. Commissioner of Public Safety*, 675 A.2d 1340, 236 Conn. 781.—Const Law 90(3).

NARROW-TIRED WAGON

Ind.App. 1901. “Narrow-tired wagon,” as used in St.1889, Acts 1889, p. 378; *Burns’ Rev.St.*1894, § 2047; *Horner’s Rev.St.*1897, § 6600, making it an offense to haul over turnpikes and gravel roads, in specified weather, loads of more than 2,000 pounds in a narrow-tired wagon, is not a technical phrase, having a peculiar and appropriate meaning in law, but is to be taken in its plain or ordinary and usual sense, which means a wagon having wheels with tires which are narrow. If tires of particular widths be compared, it is easy to say which is comparatively narrow and which is comparatively broad; but, without any prescribed standard, it is impossible to say, as a matter of law, that a tire two inches wide is certainly either a narrow tire or a broad tire. The meanings of the separate words in the phrase “narrow-tired wagon” is plain, but the word “narrow” describes not certain, but uncertain, comparative widths; and, no standard of comparison being provided by the law, it renders the phrase in which it occurs uncertain and indefinite. A particular tire may be broad or narrow according to the width of another tire or other tires of different widths with which for the occasion it is being compared.—*Cook v. State*, 59 N.E. 489, 26 Ind.App. 278.

NARROW VERTICAL COMMONALITY

D.Me. 1992. Two tests for vertical commonality in determining whether an investment is an investment contract are “broad vertical commonality” in which plaintiff must show link between investor’s fortunes and the promoter’s efforts and “narrow vertical commonality” which finds a common enterprise when the investment manager’s fortunes fall and rise with those of the investor. Securities Exchange Act of 1934, § 3(a)(10), 15 U.S.C.A. § 78c(a)(10).—*Lavery v. Kearns*, 792 F.Supp. 847.—Sec Reg 5.10.

S.D.N.Y. 1988. “Narrow vertical commonality,” required by some courts to prove “common enterprise” element of investment contract, for purposes of securities fraud claim, is met by showing of tie between fortunes of investor and investment’s promoter, causing such fortunes to rise and fall together. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).—*Department of Economic Development v. Arthur Andersen & Co. (U.S.A.)*, 683 F.Supp. 1463.—Sec Reg 5.10.

NARROW VERTICAL COMMONALITY ANALYSIS

D.Me. 1993. "Narrow vertical commonality analysis" for determining whether parties have invested in "common enterprise" establishing that transaction is "investment contract," to which state and federal securities laws apply, finds "common enterprise" when investment manager's fortunes rise and fall with those of investor. Securities Act of 1933, §§ 5, 10, 12, 15, 17, 15 U.S.C.A. §§ 77e, 77j, 77l, 77o, 77q; Securities Exchange Act of 1934, §§ 10, 20, 15 U.S.C.A. §§ 78j, 78t; 32 M.R.S.A. § 10101 et seq.; N.H.RSA 421-B:1 et seq.; M.G.L.A. c. 110A, § 101 et seq.—*Pliskin v. Bruno*, 838 F.Supp. 658.—Sec Reg 5.10, 252.

NARROW WORK

Mo.App. 1927. Employer is responsible for condition of "narrow work" places and mine entries, but not for condition of miner's room unless notified.—*Biondi v. Central Coal & Coke Co.*, 297 S.W. 171, affirmed 9 S.W.2d 596, 320 Mo. 1130.—*Emp Liab* 30.

NARROW ZIPPER CLAUSES

Ill.App. 4 Dist. 1996. "Zipper clause" seeks to close out bargaining during the contract term and to make written contract the exclusive statement of the parties' rights and obligations; "narrow zipper clauses" waive the right to bargain over issues actually negotiated by the parties and "broad zipper clauses" use specific language to foreclose bargaining on any issue not included in the contract, even if issue was unknown or not within contemplation of the parties at time contract was signed.—*Mt. Vernon Educ. Ass'n, IEA-NEA v. Illinois Educational Labor Relations Bd.*, 215 Ill.Dec. 553, 663 N.E.2d 1067, 278 Ill.App.3d 814.—*Labor* 257.1.

NASCENT

Cust. & Pat.App. 1945. Chemically, "nascent" refers to the condition of an element at the moment of liberation from a compound, marked, as in the case of hydrogen or oxygen, by a chemical activity greater than the ordinary.—*Physicians & Hospitals Supply Co. v. Bayer-Semesan Co.*, 150 F.2d 422, 32 C.C.P.A. 1228.

NASTY

Mo.App. 1913. Where the defendant in an action for slander had stated that he saw the plaintiff, a woman, drinking beer with men at midnight, and added, "You see what a low nasty character she has," the words might have been spoken under such circumstances as to charge unchastity, since "nasty," when applied to speech or conduct means morally filthy, obscene, indecent, and is more definite when used to describe the character of a woman, and it was therefore proper to overrule the defendant's demurrer of the evidence.—*Jones v. Banner*, 157 S.W. 967, 172 Mo.App. 132.

NATION

U.S.Fla. 1897. "People," when not used as the equivalent of "state" or "nation," must apply to a body of persons less than a state or nation, and this meaning would be satisfied by considering it as applicable to any consolidated political body.—*The Three Friends*, 17 S.Ct. 495, 166 U.S. 1, 41 L.Ed. 897.

U.S.N.Y. 1872. The word "State" when used in treatises upon the law of nations means the "nation" and not any subdivision of it. Per Justice Clifford.—*Crapo v. Kelly*, 83 U.S. 610, 16 Wall. 610, 21 L.Ed. 430.—*States* 1.

U.S.Ct.Cl. 1901. The word "nation," as ordinarily used, presupposes or implies an independence of any other sovereign power more or less absolute, an organized government, recognized officials, a system of laws, definite boundaries, and the power to enter into negotiations with other nations. Tribes of North American Indians cannot be regarded as constituted nations, as that word is used by writers upon international law, although they are often so designated in treaties with them.—*Montoya v. U.S.*, 21 S.Ct. 358, 180 U.S. 261, 36 Ct.Cl. 577, 45 L.Ed. 521.

C.A.2 (N.Y.) 1982. Oneidas qualified as a "nation" with whom Congress could enter into "treaties and alliances" under the Articles of Confederation.—*Oneida Indian Nation of New York v. State of N.Y.*, 691 F.2d 1070, on subsequent appeal *Oneida Indian Nation of Wisconsin v. State of N.Y.*, 732 F.2d 259, on remand 102 F.R.D. 450, cause remanded *Oneida of Thames Band v. State of N.Y.*, 757 F.2d 19, motion to recall mandate denied 771 F.2d 51, certiorari denied 106 S.Ct. 78, 474 U.S. 823, 88 L.Ed.2d 64, on remand 649 F.Supp. 420, affirmed 860 F.2d 1145, certiorari denied 110 S.Ct. 200, 493 U.S. 871, 107 L.Ed.2d 154, certiorari denied 110 S.Ct. 200, 4—*Indians* 2.

S.D.Cal. 1944. "Nation" has a more limited meaning than state.—*U.S. v. Kusche*, 56 F.Supp. 201.

N.D.Fla. 1916. A "state" or "nation" denotes a political community organized under a distinct government recognized and confirmed by its citizens and subjects as a supreme power.—*The Lucy H.*, 235 F. 610.

D.Hawai'i 1973. The Trust Territory of the Pacific Islands is included within the coverage of the National Environmental Policy Act, and the term "Nation" as used in such Act includes the Trust Territory. National Environmental Policy Act of 1969, §§ 2 et seq., 101(b), 102(1), (2)(E), 202, 42 U.S.C.A. §§ 4321 et seq., 4331(b), 4332(1), (2)(E), 4341; Joint Resolution of July 18, 1947, 61 Stat. 397.—*People of Enewetak v. Laird*, 353 F.Supp. 811.—*Territories* 18.

Indian Terr. 1902. The term "nation," as applied to the Indian nations, means a people distinct from others. The Indians have always been regarded as having a semi-independent position when they preserved their tribal relations, not as states, not as nations, not as possessed of the full attributes of

sovereignty, but as a separate people, with the powers of regulating their internal and social relations, and thus far not brought under the laws of the Union, or of the state within whose limits they reside.—*Glenn-Tucker v. Clayton*, 70 S.W. 8, 4 Ind.T. 511.

Wash. 1916. The designation of an Indian tribe as a “nation” in an Indian treaty is not a recognition of the tribe as an independent state or sovereign nation, but is a mere recognition of it as an Indian tribe and ward of the federal government.—*State v. Towessnute*, 154 P. 805, 89 Wash. 478.

Wyo. 1944. Yellowstone National Park is not a “nation” within the statute exempting from gasoline license tax gasoline exported from the state to any other state or nation.—*Texas Co. v. Siefried*, 147 P.2d 837, 60 Wyo. 142, rehearing denied 150 P.2d 99, 60 Wyo. 142.

NATIONAL

C.A.D.C. 1951. The term “national” as used in section of Trading With the Enemy Act providing that no property or interest therein of Germany or Japan, or any national of either such country, vested in or transferred to officer or agency of Federal Government after December 17, 1941, pursuant to Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein, takes in nationals wherever resident and regardless of their disposition toward Germany and Japan, and included a German alien whose stay in Germany was involuntary and who committed no acts hostile to United States during enforced stay in Germany. *Trading With the Enemy Act*, § 39, as added by War Claims Act of 1948, 50 U.S.C.A. Appendix, § 39.—*Guessefeldt v. McGrath*, 191 F.2d 639, 88 U.S.App.D.C. 383, certiorari granted 72 S.Ct. 52, 342 U.S. 810, 96 L.Ed. 613, reversed 72 S.Ct. 338, 342 U.S. 308, 96 L.Ed. 342.—War 12.

C.A.2 1975. Where resident alien had not sought naturalization, she was not a “national,” exempt from statute requiring deportation of aliens convicted of narcotics offenses, even though resident alien might emotionally owe allegiance to United States. *Immigration and Nationality Act*, §§ 101(a)(3, 22), 241(a)(11), 8 U.S.C.A. §§ 1101(a)(3, 22), 1251(a)(11).—*Oliver v. U.S. Dept. of Justice, Immigration and Naturalization Service*, 517 F.2d 426, certiorari denied 96 S.Ct. 789, 423 U.S. 1056, 46 L.Ed.2d 646.—*Aliens* 53.2(1).

C.A.7 (Ill.) 1951. A loyal American resident, unable to secure citizenship, who resided temporarily in Japan for 29 years, but owed no allegiance to Japan and had no reciprocal rights to protection by Japan, and who had no right to exercise any of political or civil privileges of Japan, and was in no sense member of nation of Japan, was not a “citizen” of Japan within purview of executive order approved by Congress defining national as any citizen or resident of foreign country, and therefore said loyal American resident was likewise not a

“national” of Japan within purview of War Claims Act provision prohibiting return to Japanese nationals of property vested by any officer or agency of United States. *Immigration Act of 1917*, § 9 et seq., as amended by *Immigration Act of 1924*, § 26, 8 U.S.C.A. § 1322 et seq.; *Trading with the Enemy Act*, §§ 2, 7(c), 9(a), 32, 33, and § 39, as added by War Claims Act of 1948, § 12, 50 U.S.C.A. App. §§ 2, 7(c), 9(a), 32, 33, 39.—*Kaku Nagano v. McGrath*, 187 F.2d 759, certiorari granted 72 S.Ct. 47, 342 U.S. 809, 96 L.Ed. 611, affirmed 72 S.Ct. 363, 342 U.S. 916, 96 L.Ed. 685.—War 12.

C.A.2 (N.Y.) 1950. A “national” of the United States, for purpose of the Nationality Act, does not include an alien. *Nationality Act of 1940*, § 101, 8 U.S.C.A. § 1101.—*Scholz v. Shaughnessy*, 180 F.2d 450.—*Citiz* 2.

N.D.Cal. 1991. Alien who entered the United States with British passport stating that he was a British Dependent Territories Citizen from Hong Kong could not be considered a “national” of the People’s Republic of China for purposes of executive order, enacted in wake of Tianamen Square incident, deferring deportation of People’s Republic nationals; *Immigration and Naturalization Service* letter clarifying the executive order as excluding persons entering with Hong Kong passports was reasonable, even though the People’s Republic clearly considered the alien to be a national.—*Wong v. Ilchert*, 785 F.Supp. 822, affirmed 998 F.2d 661.—*Aliens* 53.10(1).

S.D.Cal. 1948. A naturalized citizen who, beginning in 1923, spent several months of each year in Germany and Europe and remainder of each year at his home in California, and who in 1940 returned to California for six months during his final European visit and registered as a voter, did not manifest clear intention to change his domicile from California, and hence was not “national” or “resident” of Germany within *Trading with the Enemy Act*, as respects executor’s right to recover seized California properties, notwithstanding that citizen acquired dwelling place in Germany. *Trading with the Enemy Act*, §§ 2(a), 9, 50 U.S.C.A. Appendix, §§ 2(a), 9; Executive Order No. 9095, as amended, 50 U.S.C.A. Appendix, § 6 note.—*Sarthou v. Clark*, 78 F.Supp. 139.—War 12.

D.Conn. 1944. The statute authorizing a judgment declaring a plaintiff to be a “national” of the United States does not confer upon District Court jurisdiction to declare plaintiff a “citizen”, since the term “national” is broader than “citizen”. *Nationality Act of 1940*, §§ 101(a, b), 503, 8 U.S.C.A. §§ 501(a, b), 903.—*Brassett v. Biddle*, 59 F.Supp. 457, affirmed 148 F.2d 134.—*Citiz* 9.3.

D.D.C. 2002. Employee of government contractor, who characterized himself as an Armenian-born permanent legal resident of the United States, was an “alien,” rather than a non-citizen United States “national,” and thus Title VII’s protections would not extend to employee upon finding that his primary workstation was extraterritorial; employee did not show that he applied for United States citizenship or that he had attained certificate stating

that he was United States national for judicial or administrative proceedings abroad. Civil Rights Act of 1964, § 702(c), 42 U.S.C.A. § 2000e-1(c); Immigration and Nationality Act § 101(a)(3, 22), 8 U.S.C.A. § 1101(a)(3, 22).—*Shekoyan v. Sibley Inten. Corp.*, 217 F.Supp.2d 59.—Civil R 143.

D.Hawaii Terr. 1947. Plaintiff, who was a dual citizen of the United States and of Japan and who had acted in behalf of and under the control of a Japanese resident and subject, could not maintain action to recover property from Alien Property Custodian, since she was a “national of a foreign country” as well as a “national” of a designated enemy country. Trading with the Enemy Act of 1917, §§ 5(b), 9, 50 U.S.C.A.Appendix, § 5(b), 9; Executive Order No. 8389, § 5, subd. E(i) as amended 12 U.S.C.A. § 95a note; Executive Order No. 9095 as amended 50 U.S.C.A.Appendix, § 6 note.—*Miyuki Okihara v. Clark*, 71 F.Supp. 319.—War 12.

S.D.N.Y. 1950. A German, though naturalized as a United States citizen on January 24, 1949, was not entitled to recover property vested by the Alien Property Custodian during World War II, in view of provision of statute that no property of Germany, Japan, or any “national” of either, vested in or transferred to any officer or agency of the government after December 17, 1941, shall be returned to former owners thereof or their successors in interest. Trading With the Enemy Act, §§ 1 et seq., 9, 39, 50 U.S.C.A.Appendix, §§ 1 et seq., 9, 39; Executive Order No. 8389, § 5, subd. E(i), as amended by Executive Order No. 8785, 12 U.S.C.A. § 95a note.—*Schill v. McGrath*, 89 F.Supp. 339.—War 12.

S.D.N.Y. 1947. German alien who was a resident of Hawaii for many years until he went to Germany for a visit with intention to return to Hawaii, but who was prevented from doing so because of the war, and who had not before that time become a naturalized American citizen and who had not renounced his German citizenship, was a German “national” precluded from recovering property seized by American government by section of the Trading With the Enemy Act providing that no seized property of Germany, Japan or any “national” of either shall be returned, though he did not engage in any efforts directly or indirectly in aid of or assistance to war effort of Germany.—*Spelar v. American Overseas Airlines*, 80 F.Supp. 344.

S.D.N.Y. 1944. A New York corporation, the stock of which was either held by a Swiss holding company owned by German government through the German State Railways or held by a resident of the Netherlands acting as representative of a business firm also owned by the German government through the German State Railways was a “national” of a foreign country within Executive Orders relating to transactions in foreign exchange with nationals of certain foreign countries and authorizing Alien Property Custodian to vest in himself business property of nationals of designated enemy countries. Trading with the Enemy Act, § 5(b) as amended 50 U.S.C.A.Appendix, § 5(b); Executive Order 8389, 12 U.S.C.A. § 95 note; Executive Order 9095, as amended by Executive Order 9193,

50 U.S.C.A.Appendix, § 6 note.—*Draeger Shipping Co. v. Crowley*, 55 F.Supp. 906.—War 12.

E.D.Pa. 2002. Combination of alien’s long-time residence in the United States and his naturalization application did not qualify him for status as a “national” for purposes of Immigration and Nationality Act (INA); alien’s aggravated felony conviction was sufficient by itself to refute any other evidence of his permanent allegiance to the United States. Immigration and Nationality Act, § 101(a)(22), 8 U.S.C.A. § 1101(a)(22).—*Shittu v. Elwood*, 204 F.Supp.2d 876.—Aliens 53.1.

E.D.Pa. 2002. Long-term residency alone does not suffice to confer the status of “national” within meaning of Immigration and Nationality Act (INA); there must be some objective demonstration of permanent allegiance. Immigration and Nationality Act, § 101(a)(22), 8 U.S.C.A. § 1101(a)(22).—*Shittu v. Elwood*, 204 F.Supp.2d 876.—Aliens 53.1.

Ala. 1895. The use of the word “National,” in the corporate name of a building and loan association, is not a violation of Rev.St.U.S. § 5243 (12 U.S.C.A. § 583), prohibiting its use by banking corporations.—*Lomb v. Pioneer Savings & Loan Co.*, 17 So. 670, 106 Ala. 591, 106 Ala. 671.—B & L Assoc 4.

Cal. 1945. A native pure-blooded Filipino is a “national”, not an “alien,” and hence not prohibited by Alien Land Act from acquiring and possessing land in state, though ineligible for citizenship of United States. Gen.Laws 1937, Act 261, §§ 1, 2; Nationality Act of 1940, §§ 101(b) (2), (e), 201–204, 303, 8 U.S.C.A. §§ 501(b) (2), (e), 601–604, 703.—*Alfajara v. Fross*, 159 P.2d 14, 26 Cal.2d 358.—Aliens 1.

N.Y.Supp. 1943. Under amendatory section of the Trading With the Enemy Act and amendatory Executive Order defining word “national” as used therein where nationals of the specified foreign countries owned and controlled substantially all of Delaware corporation’s stock, corporation was a “national” within the act, and, where regulatory powers conferred upon the President by the act were delegated to the Secretary of the Treasury and a treasury representative was assigned to corporation’s business, secretary was authorized to license corporation’s operations and to take over corporation’s stock owned by foreign nationals, and representative was authorized to terminate corporation’s employment contract with plaintiff. Executive Order No. 8389, § 1, subds. A, B, § 5, subd. F, and § 7, as amended by Executive Order No. 8785, 12 U.S.C.A. § 95 note; Trading With the Enemy Act § 5(b), as amended by First War Powers Act of 1941, § 301, 50 U.S.C.A.Appendix § 5.—*Alexewicz v. General Aniline & Film Corp.*, 43 N.Y.S.2d 713, 181 Misc. 181.—War 12.

N.Y.Supp. 1943. An employee of a foreign national was a “national” of a foreign country within amendatory section of Trading With the Enemy Act authorizing the President to regulate commercial transactions involving property in which any foreign national has an interest and amendatory Executive Order defining national as used in the act to in-

clude persons acting in behalf of a foreign national, notwithstanding that the employee was an American citizen. Executive Order No. 8389, § 1, subds. A, B, § 5, subd. F, and § 7, as amended by Executive Order No. 8785, 12 U.S.C.A. § 95 note; Trading With the Enemy Act § 5(b), as amended by First War Powers Act of 1941, § 301, 50 U.S.C.A. Appendix § 5.—*Alexewicz v. General Aniline & Film Corp.*, 43 N.Y.S.2d 713, 181 Misc. 181.—War 12.

N.Y.Sup. 1943. Where employer and employee were “nationals” of a foreign country, the employment contract was a transaction involving property of a “national” within amended section of Trading With the Enemy Act authorizing the President or his agent to prohibit transactions involving property of a foreign national and hence treasury representative assigned to employer’s plant, pursuant to authority delegated to the Secretary of the Treasury by the President was authorized to terminate the contract and the termination was validated by executive order expressly ratifying previous action of the Secretary of the Treasury or his deputies. Executive Order No. 9193, § 9, 50 U.S.C.A. Appendix, § 6 note; Trading With the Enemy Act, § 5(b), as amended by First War Powers Act of 1941, § 301, 50 U.S.C.A. Appendix, § 5.—*Alexewicz v. General Aniline & Film Corp.*, 43 N.Y.S.2d 713, 181 Misc. 181.—War 12.

S.D. 1991. Federal savings bank that was chartered under Home Owners’ Loan Act was not “national bank” within meaning of statutory prohibition against branch bank in municipality with fewer than 3,000 people and with national or state bank; “national” referred to Act under which bank was chartered. Home Owners’ Loan Act, § 5, as amended, 12 U.S.C.A. § 1464; SDCL 51–20–4 (now SDCL 51A–7–4).—*Application of Farmers State Bank of Viborg*, 466 N.W.2d 158.—Banks 33.

NATIONAL AGENCY

D.Mass. 1941. That Mexican government contributed to capital of association, organized under its laws, and was represented on governing board of association, and even subsidized association out of export taxes, did not render association such a “national agency” that it might claim sovereign immunity from process of courts of United States, although its activities might tend to promote agricultural and economic interests of many of the inhabitants.—*The Uxmal*, 40 F.Supp. 258.—Intern Law 10.34.

NATIONAL ARMY

Mo. 1942. The members of the National Guard, the National Guard Reserve, the Officers’ Reserve Corps, the enlisted Reserve Corps, the National Army and the Organized Reserves are primarily civilians and their units are distinct from the “national army” and the fact that they leave their civil pursuits to take up arms for their country during the time of emergency or war does not make them “professional soldiers”.—*State ex rel. McGaughey v. Grayston*, 163 S.W.2d 335, 349 Mo. 700.—Armed S 5.

NATIONAL ASSOCIATION OF SECURITIES DEALERS

S.D.N.Y. 1999. “National Association of Securities Dealers” (NASD) is a self-regulatory association of securities firms, operating under the oversight of the federal Securities and Exchange Commission.—*Sobol v. Kidder, Peabody & Co., Inc.*, 49 F.Supp.2d 208.—Sec Reg 40.15.

NATIONAL BANK

U.S.Utah 1905. “For some purposes a ‘national bank’ is a public institution, notwithstanding it is the subject of private ownership. It may issue bills, which circulate as part of the currency of the country. It is subject to examination, and, in a large measure, to the supervision, of the Comptroller of the Currency. It is examined at stated periods, and may be the subject of special examination by order of the Comptroller. But it is owned by shareholders, like other banking institutions.” Any legal right which a stockholder of a “national bank” may have to obtain an inspection of its books may be enforced in the state courts by mandamus, in view of the provision of the act of August 13, 1888, 25 Stat. 436, c. 866, that, for actions against national banks at law or in equity, they shall be deemed citizens of the state in which they are located, and that in such cases the federal circuit and district courts shall have jurisdiction only as in cases between individual citizens of the same state.—*Guthrie v. Harkness*, 26 S.Ct. 4, 199 U.S. 148, 4 Am. Ann. Cas. 433, 50 L.Ed. 130.

C.A.11 (Ala.) 2001. A “national bank” is not necessarily federally insured, for purposes of bank fraud statute. Federal Deposit Insurance Act, § 2[3], 12 U.S.C.A. § 1813; 18 U.S.C.A. § 1344.—*U.S. v. Dennis*, 237 F.3d 1295, rehearing and rehearing denied 251 F.3d 165, certiorari denied 122 S.Ct. 55, 534 U.S. 821, 151 L.Ed.2d 24, rehearing denied 122 S.Ct. 1129, 534 U.S. 1156, 151 L.Ed.2d 1020.—Banks 509.10.

Cal.App. 4 Dist. 1943. Rule that powers granted to national banks exclude and withhold those powers not expressly granted is not applicable to a “building and loan association” organized under the Home Owners’ Loan Act, since such association is not a “national bank” and the powers and duties of the two differ materially. Home Owners’ Loan Act of 1933, § 5 et seq., as amended, 12 U.S.C.A. § 1464 et seq.—*Eddy v. Home Federal Savings & Loan Ass’n*, 140 P.2d 156, 60 Cal.App.2d 42.—B & L Assoc 1, 24.

Ga.App. 1912. A “national bank” is a corporation, the powers of which are defined and limited by the acts of Congress authorizing the creation of such institutions.—*Hansford v. National Bank of Tifton*, 73 S.E. 405, 10 Ga.App. 270.

Ky. 1939. A joint stock land bank organized under Federal Farm Loan Act was a “national bank” within state statute concerning taxation of shares of national banks, and hence shares of stock of such bank were subject to state and county assessments, especially in view of provisions of Federal Farm Loan Act empowering the taxing authori-

ties to assess and tax shares of a joint stock land bank in same manner as shares in national banking associations. Ky.St. §§ 4019a-10, 4020, 4092, 4135; Const. § 172; 12 U.S.C.A. §§ 548, 641-1021.—*Land v. Kentucky Joint Stock Land Bank of Lexington*, 131 S.W.2d 838, 279 Ky. 645.—Counties 190.1; Tax 128.

S.D. 1991. Federal savings bank that was chartered under Home Owners' Loan Act was not "national bank" within meaning of statutory prohibition against branch bank in municipality with fewer than 3,000 people and with national or state bank; "national" referred to Act under which bank was chartered. Home Owners' Loan Act, § 5, as amended, 12 U.S.C.A. § 1464; SDCL 51-20-4 (now SDCL 51A-7-4).—*Application of Farmers State Bank of Viborg*, 466 N.W.2d 158.—Banks 33.

Tex.Com.App. 1927. Judicial notice is taken that names "National Bank" and "State Bank" may be used only by incorporated banks. Vernon's Ann. Civ.St. arts. 490, 491, 541; 12 U.S.C.A. § 583.—*First Nat. Bank v. First State Bank of Jacksonville*, 291 S.W. 206.—Evid 29, 34.

Tex.Com.App. 1927. Judicial notice is taken that names "National Bank" and "State Bank" mean incorporated banks. Vernon's Ann.Civ.St. arts. 490, 491, 541; 12 U.S.C.A. § 583.—*First Nat. Bank v. First State Bank of Jacksonville*, 291 S.W. 206.—Evid 16.

Tex.App.—Houston [1 Dist.] 1983. Term "national bank," as used in section of Property Tax Code providing that Texas has jurisdiction to tax stock in a banking corporation that is located in Texas if the bank is a "national bank," encompasses all banks chartered by the federal, as opposed to the state, government, so that foreign Edge Act corporation, which maintained a branch office and conducted business in Texas, was subject to bank shares tax. V.T.C.A., Tax Code § 11.02(d); Federal Reserve Act, § 25(a), as amended, 12 U.S.C.A. § 627.—*City of Houston v. Morgan Guar. Intern. Bank*, 666 S.W.2d 524, ref. n.r.e., certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332.—Tax 127.

Va. 1935. Trust company organized under laws of District of Columbia, whose assets were taken over by receiver appointed by comptroller of currency, held not a "national bank" within statute prohibiting issuance of attachment against national banking associations in actions in state court before final judgment (D.C.Code 1929, T. 5, §§ 341, 347, 348, 349; 12 U.S.C.A. §§ 24, 37, 91).—*Loudoun Nat. Bank of Leesburg v. Continental Trust Co.*, 180 S.E. 548, 164 Va. 536, appeal dismissed *Moran v. Loudoun Nat Bank of Leesburg*, Va, 56 S.Ct. 597, 297 U.S. 698, 80 L.Ed. 988.—Banks 315(1).

NATIONAL BANK AFFILIATE

Mich. 1960. Where defendant bank purchased two-thirds of the stock of plaintiff state savings bank for purpose of having that stock voted for dissolution and employed a pension trust fund to provide pensions for defendant bank employees to make the stock purchase, the trust was an "employ-

ee pension trust" authorized by state law and was neither a "national bank affiliate" nor "holding company" nor organized nor chartered under any federal statute nor was it a "business trust" or "other similar organization". Federal Reserve Act, § 2, 12 U.S.C.A. § 221a; 26 U.S.C.A. (I.R.C.1954) § 401; Comp.Laws 1948, § 555.301 et seq.—*Peoples Sav. Bank v. Stoddard*, 102 N.W.2d 777, 359 Mich. 297, 83 A.L.R.2d 344.—Banks 236; Joint-St Co 1; Pensions 28.

NATIONAL BANK BILLS

Fla. 1891. The term "national bank bills" is used to designate "a kind or part of the national currency."—*Ex parte Prince*, 9 So. 659, 27 Fla. 196, 26 Am.St.Rep. 67.

NATIONAL BANKING ASSOCIATION

E.D.N.Y. 1938. In action by stockholders of defunct national bank, to enjoin Comptroller of Currency from enforcing assessment on them, federal District Court in New York, where bank had been located, had jurisdiction under statute providing that proceedings by any "national banking association" to enjoin Comptroller under provisions of law relating to such associations shall be had in district where such association is located, notwithstanding that service was had on Comptroller in the District of Columbia, where he resided, and notwithstanding statute providing that civil suit shall be brought against a person in district whereof he is an inhabitant, since stockholders, in view of the nonexistence of the bank, were a "national banking association" within meaning of statute and service thereunder did not conflict with statute providing for suit in defendant's district. Jud.Code §§ 49, 51, 28 U.S.C.A. §§ 1391, 1394, 1401, 1693, 1695.—*Abel v. Hellawell*, 25 F.Supp. 446.—Fed Cts 78.

NATIONAL BANKS

N.Y.A.D. 1 Dept. 1906. "National banks" are federal instrumentalities, subject to the paramount authority of the United States. An attempt by a state to define their duties, or control the conduct of their affairs, is absolutely void wherever such attempted exercise of the authority conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of those agencies of the federal government to discharge the duties for the performance of which they were created.—*Schlesinger v. Kelly*, 99 N.Y.S. 1083, 114 A.D. 546.

N.Y.Sup. 1951. There is a difference between "savings banks" and "commercial banks" including "national banks" in that a savings bank has no stockholders and is owned if at all by the depositors and there are no profits as such, whereas the commercial bank is owned by stockholders, it makes profits that go to the stockholders in the form of ordinary dividends and there is no limit upon the total amount it may receive from each depositor. 12 U.S.C.A. § 371; Banking Law, § 258, subd. 1.—*People v. Franklin Nat. Bank of Franklin Square*, 105 N.Y.S.2d 81, 200 Misc. 557, reversed 118 N.Y.S.2d 210, 281 A.D. 757, affirmed as modi-

fied 113 N.E.2d 796, 305 N.Y. 453, reversed 74 S.Ct. 550, 347 U.S. 373, 98 L.Ed. 767, remittitur amended 120 N.E.2d 852, 307 N.Y. 678.—Banks 232, 289.

Or. 1942. “National banks” are “agencies of the United States”, created under its laws to promote its fiscal policies, and the property of such banks may not be taxed under state authority except as Congress consents, and then only in conformity with such restrictions as Congress may impose. 12 U.S.C.A. § 548.—First Nat. Bank of Portland v. Marion County, 130 P.2d 9, 169 Or. 595.—Tax 10; U.S. 98.

NATIONAL CABLE TELEVISION ASS'N (NCTA) DOCTRINE

E.D.Pa. 1994. Potential problems related to “National Cable Television Ass’n (NCTA) doctrine,” requiring clear congressional expression of intent in order for Environmental Protection Agency (EPA) to exact oversight costs not inuring to benefit of regulated parties, did not bar entry of consent decree in CERCLA cost recovery action, since decree’s procedures for resolving disputed assessments made federal courts ultimate arbiters of disputes; court would defer consideration of NCTA challenges until costs were properly assessed and disputed. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107, 122(a), as amended, 42 U.S.C.A. §§ 9607, 9622(a).—U.S. v. Atlas Minerals and Chemicals, Inc., 851 F.Supp. 639.—Fed Civ Proc 2397.2.

NATIONAL CONTACTS

E.D.Va. 1997. Generally, due process inquiry under Fifth Amendment is broader than that under parallel clause of Fourteenth Amendment, and thus, whereas Fourteenth Amendment dictates that defendant have sufficient “minimum” contacts with particular forum state for jurisdictional purposes, Fifth Amendment requires only that defendant have sufficient aggregate contacts with United States as whole; this latter approach is known as “national contacts” test. U.S.C.A. Const.Amend. 5, 14; Fed.Rules Civ.Proc.Rule 12(b)(2), 28 U.S.C.A.—Board of Trustees Sheet Metal Workers’ Nat. Pension Fund v. McD Metals, Inc., 964 F.Supp. 1040.—Const Law 305(5).

NATIONAL CONTACTS DOCTRINE

E.D.Mich. 2001. The “national contacts doctrine” is premised upon the theory that where a federal statute authorizes nationwide service of process, the due process requirements of the Fifth Amendment are implicated, requiring sufficient contacts with the nation as a whole, rather than sufficient contacts with the foreign state; the key requirement under the national contacts theory is a federal statute authorizing nationwide service of process. U.S.C.A. Const.Amend. 5.—Sunshine Distribution, Inc. v. Sports Authority Michigan, Inc., 157 F.Supp.2d 779.—Const Law 305(5); Fed Cts 86.

NATIONAL CONTACTS THEORY

E.D.N.C. 1996. Under “national contacts theory,” when Congress has authorized nationwide service of process by federal courts under specific federal statutes, so long as assertion of jurisdiction over defendant is compatible with due process service is sufficient to establish jurisdiction of federal court over person of defendant. U.S.C.A. Const. Amend. 14.—Boon Partners v. Advanced Financial Concepts, Inc., 917 F.Supp. 392.—Const Law 305(4.1); Fed Civ Proc 411.

NATIONAL CONTINGENCY PLAN

C.A.11 (Ala.) 1996. “National contingency plan” “(NCP)” is body of regulations governing cleanup of hazardous waste sites under CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 105(a), 42 U.S.C.A. § 9605(a).—Redwing Carriers, Inc. v. Saraland Apartments, 94 F.3d 1489, 140 A.L.R. Fed. 691.—Environ Law 439.

C.A.5 (Tex.) 1993. “National Contingency Plan,” (NCP) promulgated by Environmental Protection Agency (EPA) as mandated by CERCLA, guides federal and state response activities; NCP identifies methods for investigating environmental and health problems resulting from release or threatened release of hazardous substance and criteria for determining appropriate extent of response activities. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 105, as amended, 42 U.S.C.A. § 9605.—Matter of Bell Petroleum Services, Inc., 3 F.3d 889, appeal after remand U.S. v. Bell Petroleum Services, Inc., 64 F.3d 202, rehearing denied.—Environ Law 439.

N.D.Ohio 2001. The “national contingency plan” is a series of regulations promulgated by the Environmental Protection Agency (EPA), which defines procedures and standards for waste site cleanups, and its purpose is to give some consistency and cohesiveness to response planning and actions, under CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101 et seq., as amended, 42 U.S.C.A. § 9601 et seq.; 40 C.F.R. § 300.1 et seq.—U.S. v. Chrysler Corp., 168 F.Supp.2d 754.—Environ Law 439.

S.D.Ohio 2001. The “national contingency plan” (NCP) is a series of regulations promulgated by the Environmental Protection Agency (EPA); the regulations establish criteria and provide guidance for site evaluation and cost effectiveness, planning for cleanup actions, and consideration of alternative remedial options. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 105(a), 42 U.S.C.A. § 9605(a); 40 C.F.R. § 300.1 et seq.—AlliedSignal, Inc. v. Amcast Intern. Corp., 177 F.Supp.2d 713.—Environ Law 439.

NATIONAL CURRENCY

Ind. 1886. A certificate of receiving a certain amount “on deposit in national currency” means that the maker of the certificate had received a deposit in money, for the words “national currency”

denote money, and contain, by implication of law, a promise to repay the depositor his money.—*Long v. Straus*, 6 N.E. 123, 107 Ind. 94, 57 Am.Rep. 87, rehearing denied 7 N.E. 763, 107 Ind. 94, 57 Am. Rep. 87.

NATIONAL DEBT

N.Y.A.D. 2 Dept. 1898. The *Encyclopædia Britannica*, under the title of "national debt," in drawing the distinction between a "funded debt," which term is said to apply to a debt which is recognized at least as quasi permanent and for the payment of the interest on which legal provision is made, says that "unfounded or floating debt, on the other hand, means strictly loans for which no permanent provision requires to be made, which have been obtained for temporary purposes, with the intention of paying them off within a brief period. Exchequer and treasury bills are included in this category, and such other moneys in the hands of a government as it may be required to reimburse at any moment."—*People ex rel. Peene v. Carpenter*, 52 N.Y.S. 781, 31 A.D. 603.

NATIONAL DEFENSE

U.S.Cal. 1941. Under the Espionage Act, providing for the punishment of persons obtaining or delivering information connected with or relating to the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, the term "national defense" is a generic concept of broad connotations and refers to the military and naval establishments and the related activities of national preparedness. Espionage Act, §§ 1(a), 2(a), 50 U.S.C.A. §§ 31, 32.—*Gorin v. U.S.*, 61 S.Ct. 429, 312 U.S. 19, 85 L.Ed. 488, rehearing denied 61 S.Ct. 617, 312 U.S. 713, 85 L.Ed. 1144, rehearing denied *Salich v. U.S.*, 61 S.Ct. 618, 312 U.S. 713, 85 L.Ed. 1144.—War 48.

U.S.Cal. 1941. In prosecution for violation of the Espionage Act by obtaining documents connected with the national defense, in delivering and inducing delivery of documents to the agent of a foreign nation, and by conspiracy to deliver them to a foreign government and its agent, instructions gave adequate definition to "connected with" or "relating to" national defense and set out the definition of "national defense", as including all matters directly and reasonably connected with the defense of the nation against its enemies, in a manner favorable and unobjectionable to defendants. Espionage Act, §§ 1(a), 2(a), 50 U.S.C.A. §§ 31, 32.—*Gorin v. U.S.*, 61 S.Ct. 429, 312 U.S. 19, 85 L.Ed. 488, rehearing denied 61 S.Ct. 617, 312 U.S. 713, 85 L.Ed. 1144, rehearing denied *Salich v. U.S.*, 61 S.Ct. 618, 312 U.S. 713, 85 L.Ed. 1144.—War 48.

U.S.Wash. 1967. Implicit in term "national defense" is notion of defending those values and ideals which set this nation apart. Subversive Activities Control Act of 1950, § 5(a) (1) (D), 50 U.S.C.A. § 784(a) (1) (D).—*U.S. v. Robel*, 88 S.Ct. 419, 389 U.S. 258, 19 L.Ed.2d 508.—War 35.

CMA 1987. The term "national defense," within purview of sabotage statute, includes injury to a combat aircraft which is a very valuable and limited resource. 18 U.S.C.A. § 2155.—*U.S. v. Johnson*, 24 M.J. 101.—Mil Jus 790.

C.A.9 (Cal.) 1979. In prosecutions wherein defendant was convicted of, inter alia, conspiring to gather and actually gathering national defense information intending or having reason to believe that it would be used to advantage of foreign nation and unauthorized possession of national defense information and transmitting it to nonauthorized persons, evidence permitted jury, instructed upon concept of "national defense," to find that Pyramider documents were "national defense" information, the term "national defense" being one not limited strictly to information concerning "military establishment" and military preparedness for defending territory of the United States. 18 U.S.C.A. §§ 793, 794, 794(a).—*U.S. v. Boyce*, 594 F.2d 1246, certiorari denied 100 S.Ct. 112, 444 U.S. 855, 62 L.Ed.2d 73.—War 48.

C.C.A.9 (Cal.) 1940. The statute relating to unlawfully obtaining or permitting to be obtained, information affecting national defense, uses the words "national defense" in a broad sense with a flexible meaning, and court could not restrict meaning to information relating to vessel, aircraft, work of defense, etc., enumerated in one of the subsections in the act. 50 U.S.C.A. § 31.—*Gorin v. U.S.*, 111 F.2d 712, certiorari granted 60 S.Ct. 1105, 310 U.S. 622, 84 L.Ed. 1394, certiorari granted *Salich v. U.S.*, 60 S.Ct. 1105, 310 U.S. 622, 84 L.Ed. 1394, affirmed 61 S.Ct. 429, 312 U.S. 19, 85 L.Ed. 488, rehearing denied 61 S.Ct. 617, 312 U.S. 713, 85 L.Ed. 1144, rehearing denied 61 S.Ct. 618, 312 U.S. 713, 85 L.Ed. 1144.—War 48.

C.C.A.9 (Cal.) 1940. The statutes making it unlawful to obtain or disclose information affecting national defense, construed as presenting a question of fact for determination of the jury regarding what is or is not connected with the "national defense", do not violate the Fifth and Sixth Amendments. 50 U.S.C.A. 31, 32; U.S.C.A. Const. Amends. 5, 6.—*Gorin v. U.S.*, 111 F.2d 712, certiorari granted 60 S.Ct. 1105, 310 U.S. 622, 84 L.Ed. 1394, certiorari granted *Salich v. U.S.*, 60 S.Ct. 1105, 310 U.S. 622, 84 L.Ed. 1394, affirmed 61 S.Ct. 429, 312 U.S. 19, 85 L.Ed. 488, rehearing denied 61 S.Ct. 617, 312 U.S. 713, 85 L.Ed. 1144, rehearing denied 61 S.Ct. 618, 312 U.S. 713, 85 L.Ed. 1144.—Const Law 258(3.1); Ind & Inf 56; War 36.

C.C.A.9 (Cal.) 1940. The words "national defense" as used in statutes making it unlawful to obtain and disclose information affecting national defense and to conspire to communicate information relating to national defense, are similar to the words "common defense" as used in Constitution giving Congress power to provide for the common defense. 50 U.S.C.A. § 31 et seq.; U.S.C.A. Const. art. 1, § 8.—*Gorin v. U.S.*, 111 F.2d 712, certiorari granted 60 S.Ct. 1105, 310 U.S. 622, 84 L.Ed. 1394, certiorari granted *Salich v. U.S.*, 60 S.Ct. 1105, 310 U.S. 622, 84 L.Ed. 1394, affirmed 61 S.Ct. 429, 312 U.S. 19, 85 L.Ed. 488, rehearing denied 61 S.Ct.

617, 312 U.S. 713, 85 L.Ed. 1144, rehearing denied 61 S.Ct. 618, 312 U.S. 713, 85 L.Ed. 1144.—War 48.

C.C.A.9 (Cal.) 1940. In prosecution for unlawfully obtaining and disclosing information affecting national defense, instructions regarding "national defense" did not contain error prejudicial to defendants. 50 U.S.C.A. §§ 31, 32.—*Gorin v. U.S.*, 111 F.2d 712, certiorari granted 60 S.Ct. 1105, 310 U.S. 622, 84 L.Ed. 1394, certiorari granted *Salich v. U.S.*, 60 S.Ct. 1105, 310 U.S. 622, 84 L.Ed. 1394, affirmed 61 S.Ct. 429, 312 U.S. 19, 85 L.Ed. 488, rehearing denied 61 S.Ct. 617, 312 U.S. 713, 85 L.Ed. 1144, rehearing denied 61 S.Ct. 618, 312 U.S. 713, 85 L.Ed. 1144.—*Crim Law* 1172.7.

D.D.C. 1951. The power of Congress under the Constitution to legislate concerning the "national defense" includes power to declare war, raise and support armies, provide and maintain a navy, and make all laws necessary and proper for carrying such powers into execution. U.S.C.A.Const. art. 1, § 8.—*U.S. v. Peace Information Center*, 97 F.Supp. 255.—*Armed S* 1; War 2, 35.

D.D.C. 1951. The power of Congress under Constitution to legislate concerning the "national defense" necessarily includes authority to take preventive measures against activities that may cause international misunderstandings, which may lead to war, and against endeavors to subvert, undermine, or overthrow the government. U.S.C.A.Const. art. 1, § 8.—*U.S. v. Peace Information Center*, 97 F.Supp. 255.—War 35.

D.D.C. 1951. The subject matter of Foreign Agents Registration Act affecting agents of foreign principals who carry on specified activities in the United States is within the power of Congress under Constitution to legislate concerning the "national defense". Foreign Agents Registration Act of 1938, § 1 et seq., as amended, 22 U.S.C.A. § 611 et seq.; U.S.C.A.Const. art. 1, § 8.—*U.S. v. Peace Information Center*, 97 F.Supp. 255.—War 35.

D.Nev. 1996. While term "military or state secrets" is amorphous in nature, it should be defined in light of reason and experience, much in same way that "national defense" has been defined, i.e., generic concept of broad connotations, referring to military and naval establishments and related activities of national preparedness.—*Frost v. Perry*, 919 F.Supp. 1459, affirmed *Kasza v. Browner*, 133 F.3d 1159, certiorari denied 119 S.Ct. 414, 525 U.S. 967, 142 L.Ed.2d 336.—*Witn* 216(1).

S.D.N.Y. 1970. Term "national defense" as used in sabotage statute respecting the destruction of national defense materials, premises or utilities is a generic concept of broad connotations referring to military and naval establishments and the related activities of national preparedness. 18 U.S.C.A. § 2155.—*U.S. v. Melville*, 309 F.Supp. 774.—*Armed S* 40(5).

NATIONAL-DEFENSE MATERIAL

CMA 1987. "National-defense material," for purposes of statute prohibiting sabotage of national-defense material, premises or utilities, included

Air Force F-15 aircraft. 18 U.S.C.A. § 2155.—*U.S. v. Ortiz*, 24 M.J. 164, on remand 25 M.J. 570.—*Mil Jus* 790.

NATIONAL DOMICILE

Ind.App. 2 Div. 1917. The term "domicile" is expressive of a relation between person and place, and indicates various degrees of comprehensiveness, and may relate to permanency of residence in a nation or in a division exercising quasi sovereign powers; a "national domicile" relating to residence in a nation, "quasi national domicile" relating to residence in a state, and "municipal domicile," sometimes referred to as "domestic domicile," relating to residence in a county, township, or municipality.—*Hayward v. Hayward*, 115 N.E. 966, 65 Ind.App. 440, rehearing denied 116 N.E. 746, 65 Ind.App. 440.

NATIONAL EMERGENCY

C.A.10 (Colo.) 1977. For purpose of Federal Sabotage Act provision which proscribes specified conduct when the United States is at war or in times of declared "national emergency," a "national emergency" must be based on conditions beyond the ordinary; power of Soviet Union in world affairs does not justify placing the United States in a constant state of "national emergency." 18 U.S.C.A. § 2153(a).—*U.S. v. Bishop*, 555 F.2d 771.—War 53.

S.D.Cal. 1962. Economic "national emergency" prerequisite to validity of 1933 executive order of the President declaring "national emergency" and prohibiting hoarding of gold no longer exists in 1962, and indictment charging defendants with holding gold bullion in violation of that executive order and statute was required to be dismissed. Emergency Banking Act of 1933, § 2, 12 U.S.C.A. § 95a; Executive Order No. 6260, 12 U.S.C.A. § 95a note; U.S.C.A.Const. art. 1, § 8, cls. 2, 5, 18.—*U.S. v. Bridgell*, 212 F.Supp. 584.—*U S* 34.

NATIONAL ENVIRONMENTAL POLICY ACT

S.D.Ohio 1972. "National Environmental Policy Act" does not prohibit actions which adversely affect human environment but requires consideration of environmental considerations of all federal actions without regard to their legality or illegality.—*Citizens Organized to Defend Environment, Inc. v. Volpe*, 353 F.Supp. 520.—*Environ Law* 577.

D.S.D. 1978. The "National Environmental Policy Act" was never intended to be used for purposes of promoting full employment or preventing discharge or transfer of federal personnel, nor was it ever envisioned to be a substitute community-planning device. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.—*Rysavy v. Harris*, 457 F.Supp. 796.—*Environ Law* 606.

NATIONAL ENVIRONMENTAL POLICY ACT'S

C.A.9 (Mont.) 1988. For purposes of "National Environmental Policy Act's" requirement that federal agency prepare environmental impact state-

ment unless there is finding of no significant impact, "biological assessment" analyzes impact of proposed action upon endangered species, whereas "environmental assessment" analyzes impact of proposed action on all facets of environment. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; Endangered Species Act of 1973, §§ 2 et seq., 7(c)(1), 16 U.S.C.A. §§ 1531 et seq., 1536(c)(1).—*Save the Yaak Committee v. Block*, 840 F.2d 714.—*Environ Law* 581.

NATIONAL FIREARMS ACT

N.D.Ala. 1987. For purposes of "National Firearms Act", "manufacturer" is someone who makes more than one of particular item for sale, while "maker" is someone who puts together only one of item, or few of it, and not for sale in ordinary course of business. 26 U.S.C.A. § 5841.—*U.S. v. Allen*, 666 F.Supp. 203, reversed 842 F.2d 1265.—*Weap* 4.

NATIONAL FOREST

C.A.6 (Ky.) 1985. Lands within Redbird Purchase Unit, which were acquired by United States under authority of Weeks Act, were "national forest" lands within meaning of statute which prohibits coal mining which disturb surface on federal lands within national forest. Surface Mining Control and Reclamation Act of 1977, § 522(e), (e)(2), 30 U.S.C.A. § 1272(e), (e)(2); Conservation Act, § 11, 16 U.S.C.A. § 521.—*Ramex Min. Corp. v. Watt*, 753 F.2d 521, certiorari denied *Stearns Co. v. Hodel*, 106 S.Ct. 271, 474 U.S. 900, 88 L.Ed.2d 225, certiorari denied *Gabriel Energy Corp. v. Hodel*, 106 S.Ct. 271, 474 U.S. 900, 88 L.Ed.2d 225.—*Mines* 92.5(2).

NATIONAL FORESTS

Cal.App. 3 Dist. 1918. Forest reservations authorized in 1891 are identical with "national forests," as they are called in Act Cong. March 4, 1907, 34 Stat. 1256, 1269, and in St.1917, p. 1218, authorizing reselection when lands once selected as lieu lands are closed on account of the release of base lands from national forests, and neither act requires that the land shall have been permanently included in a national forest as a prerequisite to reselection.—*Walker v. Kingsbury*, 173 P. 95, 36 Cal.App. 617.—*Pub Lands* 53.

Okla. 1967. In federal law, "forest reserves," "forest reservations" and "national forests" are synonymous terms.—*Board of County Com'rs of Marshall County v. Snellgrove*, 428 P.2d 272, 1967 OK 108.—*Woods* 8.

NATIONAL FOREST SYSTEM

C.A.9 (Mont.) 1981. Alaska National Interest Lands Conservation Act section providing for access to nonfederally owned lands surrounded by certain kinds of federal lands is not limited in its application to state of Alaska but, rather, has nationwide application, term "National Forest System" being of general application. Montana Wilderness Study Act, §§ 2 et seq., 3(a), 16 U.S.C.A. § 1132 note; Act July 2, 1864, 13 Stat. 365; Wilder-

ness Act, § 5(a), 16 U.S.C.A. § 1134(a); Alaska National Interest Lands Conservation Act, §§ 101 et seq., 102(3), 501, 501(a), 1110, 1110(b), 1111, 1323, 1323(a, b), 1324, 16 U.S.C.A. §§ 3101 et seq., 3102(3), 539, 539(a), 3170, 3170(b), 3171, 3210, 3210(a, b), 3211; Forest and Rangeland Renewable Resources Planning Act of 1974, § 11(a), 16 U.S.C.A. § 1609(a).—*Montana Wilderness Ass'n, Nine Quarter Circle Ranch v. U. S. Forest Service*, 655 F.2d 951, certiorari denied 102 S.Ct. 1612, 455 U.S. 989, 71 L.Ed.2d 848.—*Woods* 8.

NATIONAL IN SCOPE

C.A.6 (Mich.) 1955. Labor organization held qualified to participate in selection of National Railroad Adjustment Board members would be "national in scope" within meaning of exception to union shop requirement of Railway Labor Act. Railway Labor Act, § 2, subd. 11(c), and § 3, subds. 1(a, f), 2 as amended 45 U.S.C.A. § 152, subd. 11(c) and § 153, subds. 1(a, f), 2.—*Pigott v. Detroit, T. & I.R. Co.*, 221 F.2d 736, certiorari denied 74 S.Ct. 639, 347 U.S. 944, 98 L.Ed. 1092, certiorari denied 76 S.Ct. 68, 350 U.S. 833, 100 L.Ed. 743.—*Labor* 133.

C.A.6 (Mich.) 1955. Where union had not sought to qualify for right to select members of National Railroad Adjustment Board, whether such union was national in scope within meaning of provision of union shop agreement between railroad and brotherhood requiring employees to become members of brotherhood unless they already belonged to another labor organization "national in scope", was issue solely within province of system board of adjustment. Railway Labor Act, § 2, subds. 4, 11(c) and § 3, subds. 1(a, f), 2 as amended 45 U.S.C.A. § 152, subds. 4, 11(c) and § 153, subds. 1(a, f), 2.—*Pigott v. Detroit, T. & I.R. Co.*, 221 F.2d 736, certiorari denied 74 S.Ct. 639, 347 U.S. 944, 98 L.Ed. 1092, certiorari denied 76 S.Ct. 68, 350 U.S. 833, 100 L.Ed. 743.—*Labor* 417.

NATIONAL INSIGNIA

C.A.9 (Cal.) 1981. Term "national insignia" as used in Lanham Trade-Mark Act is restricted to official symbols of government, and where fleur-de-lis was traditional symbol of royalty rather than "insignia" of France, and where reign of French royalty had long since ended and where design was only in part inspired by the fleur-de-lis, design was not unprotectable as a "national insignia."—*Lanham Trade-Mark Act*, § 2(b), 15 U.S.C.A. § 1052(b).—*Vuitton Et Fils S.A. v. J. Young Enterprises, Inc.*, 644 F.2d 769.—*Trade Reg* 156.

NATIONAL INTEREST

C.A.1 (Mass.) 1967. "National interest", as used in provision of Universal Military Training and Service Act authorizing deferments to college students, was intended as something to be advanced not only by encouraging students in rocket engineering but also in the social sciences and the humanities. Universal Military Training and Service Act, § 6(h), 50 U.S.C.A.App. § 456(h).—*Talman v. U.S.*, 386 F.2d 811, certiorari denied 88

S.Ct. 1658, 391 U.S. 907, 20 L.Ed.2d 421.—*Armed S* 20.6(1).

NATIONALITY

C.A.9 (Hawai'i) 1950. "Nationality" is a term denoting a relationship between an individual and a nation involving a duty of obedience or allegiance by the subject and protection by the state.—*Cabebe v. Acheson*, 183 F.2d 795.—*Citiz* 10.1.

N.Y. 1937. The words "residence" and "domicile" when used in a statute may have identical or variable meaning, depending upon nature of subject matter of statute as well as context in which words are used, and "nationality," "citizenship," and "domicile" may have an identical meaning and be exclusive of "residence."—*Perkins v. Guaranty Trust Co. of New York*, 8 N.E.2d 849, 274 N.Y. 250, reargument denied 10 N.E.2d 589, 274 N.Y. 636, reargument granted 11 N.E.2d 741, 275 N.Y. 542, remittitur amended 12 N.E.2d 571, 276 N.Y. 553.—*Domicile* 2.

NATIONALITY PRINCIPLE

S.D.N.Y. 1980. "Nationality principle," which permits a state to prosecute offenses committed by nationals abroad, provided basis for jurisdiction in district court over prosecution of United States citizens charged with various drug smuggling offenses.—*U.S. v. Egan*, 501 F.Supp. 1252.—*Crim Law* 97(1).

NATIONALITY THEORY

C.A.9 (Or.) 2002. Extraterritorial jurisdiction is proper under the "nationality theory," which permits a country to apply its statutes to extraterritorial acts of its own nationals.—*U.S. v. Hill*, 279 F.3d 731.—*Crim Law* 18; *Intern Law* 7.

C.A.9 (Or.) 2002. "Nationality theory" of extraterritorial jurisdiction supported Oregon federal court's assertion of jurisdiction over wife, who was charged with harboring husband in Mexico where he fled to avoid felony arrest warrant under *Deadbeat Parents Punishment Act*, since wife and husband were both citizens of United States, their criminal acts outside United States could be punished in the United States. 18 U.S.C.A. § 228.—*U.S. v. Hill*, 279 F.3d 731.—*Crim Law* 97(0.5).

S.D.Cal. 1960. Under the "nationality theory" of jurisdiction, nationals abroad are subject to laws of their government wherever they may be.—*U.S. v. Rodriguez*, 182 F.Supp. 479, affirmed in part, reversed in part *Rocha v. U.S.*, 288 F.2d 545, certiorari denied 81 S.Ct. 1902, 366 U.S. 948, 6 L.Ed.2d 1241.—*Intern Law* 7.

NATIONALIZE

N.Y.A.D. 2 Dept. 1961. Cuban law and resolution which expropriated Cuban assets of corporation but which did not absorb corporation and put it completely out of existence and did not preserve corporation merely as corporate entity in ownership and complete control of government, did not "nationalize" corporation within statute permitting appointment of receiver of assets of nationalized for-

eign corporation. *Civil Practice Act*, § 977-b.—*Schwartz v. Compania Azucarera Vertientes-Camaguey De Cuba*, 217 N.Y.S.2d 711, 14 A.D.2d 582.—*Corp* 684.

NATIONAL JURISDICTION

C.A.9 (Cal.) 1994. Recognized bases of jurisdiction to prescribe include "territorial jurisdiction," based on place where offense is committed, "national jurisdiction" based on nationality or national character of offender, "universal jurisdiction," which is appropriate for crimes so heinous that any nation with control over Supreme Court may assert jurisdiction, and "passive personality jurisdiction" based on nationality of victim.—*U.S. v. Vasquez-Velasco*, 15 F.3d 833.—*Crim Law* 97(0.5).

NATIONAL LAWS OR REGULATIONS

U.S.N.Y. 1951. The exceptions referred to in *Shipowners' Liability Convention* permitting "national laws or regulations" to make exceptions in respect of certain injuries, sickness or infirmity for which shipowner is liable are operative by virtue of general maritime law, and no Act of Congress is necessary to give them force. *Shipowners' Liability Convention*, Sept. 29, 1939, art. 2, subd. 2(a-c).—*Warren v. U.S.*, 71 S.Ct. 432, 340 U.S. 523, 95 L.Ed. 503.—*Seamen* 11(1), 29(1).

U.S.N.Y. 1951. The term "law" usually includes the rules of court decisions as well as legislative acts, and the term "national laws or regulations" in *Shipowners' Liability Convention* permitting "national laws or regulations" to make exceptions in respect of certain injuries, sickness or infirmity for which shipowner is liable will not be given a more restricted meaning. *Shipowners' Liability Convention*, Sept. 29, 1939, art. 2, subd. 2(a-c).—*Warren v. U.S.*, 71 S.Ct. 432, 340 U.S. 523, 95 L.Ed. 503.—*Seamen* 11(1).

NATIONALLY

S.C. 1977. Within statute authorizing fire marshal to promulgate regulations based upon nationally recognized standards, "nationally" means with regard to, affecting, or involving a nation as a whole and "nationally recognized standards" means standards recognized or adopted in at least majority of states. Code 1962, § 37-82.1.—*Johnson v. Roberts*, 236 S.E.2d 737, 269 S.C. 119, appeal dismissed 98 S.Ct. 1222, 434 U.S. 1055, 55 L.Ed.2d 755.—*Health* 393.

NATIONALLY APPLICABLE REGULATION

C.A.D.C. 1988. Environmental Protection Agency regulation, which applied new demonstration requirements to sources that completed demonstrations supporting above-formula stacks under invalidated, relativist test for emissions limitation credit, was "nationally applicable regulation" reviewable by Court of Appeals for District of Columbia Circuit and was not locally or regionally applicable regulation reviewable by local Court of Appeals. *Clean Air Act*, §§ 123, 123(a, c), 307(b), (b)(1), as amended, 42 U.S.C.A. §§ 7423, 7423(a, c), 7607(b), (b)(1).—*Natural Resources Defense Council, Inc. v.*

Thomas, 838 F.2d 1224, 267 U.S.App.D.C. 274, certiorari denied *Alabama Power Co. v. Thomas*, 109 S.Ct. 219, 488 U.S. 888, 102 L.Ed.2d 210, certiorari denied *National Coal Ass'n v. Natural Resources Defense Council*, 109 S.Ct. 219, 488 U.S. 888, 102 L.Ed.2d 210, certiorari denied *Ohio Power Co. v. Thomas*, 109 S.Ct. 250, 488 U.S. 901, 102 L.Ed.2d 238.—Fed Cts 1133.

NATIONALLY RECOGNIZED CIVIC ORGANIZATION

N.C.App. 1998. Organization whose members were descendants of Confederate Civil War veterans was of a similar character as the qualifying organizations enumerated within statute governing issuance of special registration license plates and was a "nationally recognized civic organization" within meaning of statute; organization, like those enumerated in statute, engaged in charitable and benevolent community activities and was listed in comprehensive encyclopedia of nonprofit American membership organizations of national scope. G.S. § 20-79.4(b)(5).—*North Carolina Div. of Sons of Confederate Veterans v. Faulkner*, 509 S.E.2d 207, 131 N.C.App. 775.—Autos 41.

NATIONALLY RECOGNIZED STANDARDS

S.C. 1977. Within statute authorizing fire marshal to promulgate regulations based upon nationally recognized standards, "nationally" means with regard to, affecting, or involving a nation as a whole and "nationally recognized standards" means standards recognized or adopted in at least majority of states. Code 1962, § 37-82.1.—*Johnson v. Roberts*, 236 S.E.2d 737, 269 S.C. 119, appeal dismissed 98 S.Ct. 1222, 434 U.S. 1055, 55 L.Ed.2d 755.—*Health* 393.

NATIONALLY RECOGNIZED TESTING LABORATORY

Tex.App.—Austin 1987. Manufacturer and seller of small fire extinguishers demonstrated probable right to recover on merits of declaratory judgment suit and was entitled to temporary injunction against state fire marshal's interference with marketing, sale, and delivery of its product; salesman's testimony that manufacturer lost sales due to fire marshal's actions was some evidence from which it could be concluded that manufacturer was "retailing or wholesaling" so as to qualify for Insurance Code exemption from regulation, and district court could conclude that Kansas laboratory which approved those extinguishers was "nationally recognized testing laboratory" as required by other Code provisions. V.A.T.S. Insurance Code, art. 5.43-1, §§ 1, 3, 5(a), 6(d).—*Emerson v. Fires Out, Inc.*, 735 S.W.2d 492.—Decl Judgm 258.

NATIONAL MONUMENT

S.D.Fla. 1969. A "national monument" is an area established for preservation of a particular resource, similar to a national park.—*U.S. v. Ray*, 294 F.Supp. 532, affirmed in part, reversed in part 423 F.2d 16.—U S 57.

NATIONAL OF A DESIGNATED ENEMY COUNTRY

C.C.A.2 (N.Y.) 1945. A naturalized citizen of Italian birth who temporarily returned to Italy in attempt to regain his lost mental health and who was unable to return because of the war, was not a "resident" of Italy, an "enemy," a "foreign national" or a "national of a designated enemy country" within Trading With the Enemy Act so as to permit seizure of the property by the Alien Property Custodian. Trading With the Enemy Act, §§ 3(a), 5(b), as amended by First War Powers Act 1941, § 301, 50 U.S.C.A.Appendix, §§ 3(a), 5(b).—*Josephberg v. Markham*, 152 F.2d 644.—War 12.

NATIONAL OF EITHER PARTY

C.A.5 (Tex.) 1981. Proper construction of Treaty of Friendship, Commerce and Navigation between United States and Japan article providing that companies under applicable laws and regulations within the territories of either party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other party provides no explicit definition of "company of either Party," or definition for "national of either Party," and under such article, New York corporation wholly owned by Japanese parent could assert all rights extended to "companies of either Party" by the Japanese Treaty.—*Spieß v. C. Itoh & Co. (America), Inc.*, 643 F.2d 353, rehearing granted 654 F.2d 302, vacated 664 F.2d 480, opinion reinstated 664 F.2d 480, certiorari dismissed 102 S.Ct. 984, 454 U.S. 1130, 71 L.Ed.2d 119, certiorari granted, vacated 102 S.Ct. 2951, 457 U.S. 1128, 73 L.Ed.2d 1344, on remand 687 F.2d 129, appeal dismissed *Yakowicz v. Com. of Pa.*, 683 F.2d 778, appeal after remand 725 F.2d 970, rehearing denied 729 F.2d 779, certiorari denied 105 S.Ct. 115, 469 U.S. 829, 83 L.Ed.2d 58, certiorari—Treaties 8.

NATIONAL ORIGIN

U.S.Tex. 1973. In equal employment opportunities provisions of Civil Rights Act, term "national origin" on its face refers to country where person was born, or, more broadly, country from which his or her ancestors came and was not intended to embrace requirement of United States citizenship. Civil Rights Act of 1964, §§ 701 et seq., 703(a)(1), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a)(1).—*Espinoza v. Farah Mfg. Co., Inc.*, 94 S.Ct. 334, 414 U.S. 86, 38 L.Ed.2d 287.—Civil R 142.

C.A.D.C. 1978. Claim of plaintiff, now a citizen but who had been denied federal civil service rating by reason of his prior alienage at time when he was a resident alien, for back pay was barred by doctrine of sovereign immunity, and provision of Equal Employment Opportunity Act of 1972 could not supply necessary waiver in its provision that personnel actions shall be made free from any discrimination based on race, color, religion, sex or national origin, since term "national origin" does not include "aliens" but merely refers to country from which a person's ancestors came. Civil Rights Act of 1964, § 717 as amended 42 U.S.C.A.

§ 2000e-16.—*Jalil v. Campbell*, 590 F.2d 1120, 192 U.S.App.D.C. 4.—U S 125(15).

C.A.7 (Ill.) 1991. Discrimination in favor of foreign executives given special status by virtue of treaty and its implementing regulations is not equivalent to discrimination on basis of "national origin" for purposes of Title VII. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—*Fortino v. Quasar Co., a Div. of Matsushita Elec. Corp. of America*, 950 F.2d 389.—Civil R 142.

D.Alaska 1999. Alaska borough ordinance giving employment preference to Native Americans for borough jobs was discrimination based upon "national origin," proscribed by borough charter.—*Malabed v. North Slope Borough*, 42 F.Supp.2d 927.—Mun Corp 111(1).

N.D.Cal. 1992. "National origin," on its face, for purpose of Title VII, refers to country where person was born, or, more broadly, country from which his or her ancestors came. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.—*Lemmitzer v. Philippine Airlines, Inc.*, 816 F.Supp. 1441, affirmed in part, reversed in part 52 F.3d 333.—Civil R 142.

D.Kan. 1995. While concepts of national origin and race may overlap, they are not necessarily synonymous; "national origin," discrimination on basis of which is not actionable under federal civil rights statute guaranteeing equal rights under law, suggests particular geographical area with national boundaries in which person and his or her ancestors may have lived, while "race," discrimination on basis of which is actionable under statute, suggests human physical characteristics like skin and hair color, body size, and facial features typical of persons of particular cultural or social background. 42 U.S.C.A. § 1981.—*Zapata v. IBP, Inc.*, 162 F.R.D. 359, reconsideration denied 1995 WL 526527, affirmed 1995 WL 646821, affirmed 1995 WL 646821.—Civil R 104.2, 142.

W.D.La. 1980. Acadian had "national origin" for purposes of Title VII even though there was never a country of Acadia, and thus Title VII prohibited discrimination in employment against one on basis of fact that he is "Acadian" or "Cajun;" an "Acadian" or "Cajun" is one whose ancestry includes someone who once lived in Acadia. Civil Rights Act of 1964, §§ 701 et seq., 703(a) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a).—*Roach v. Dresser Indus. Valve and Instrument Division*, 494 F.Supp. 215.—Civil R 142.

D.N.J. 1998. Emphasis in determining whether adverse employment action was based upon employee's "national origin," as opposed to other potential factors, should be on employee's objective appearance to others, not necessarily on his ancestry or birthplace; national origin discrimination is not limited to denial of equal opportunity because of place of origin or possession of physical, cultural or linguistic characteristics of a national origin group. 42 U.S.C.A. § 1983; 29 C.F.R. § 1606.1.—*Harel v. Rutgers, State University*, 5 F.Supp.2d 246, affirmed 191 F.3d 444, certiorari denied 120 S.Ct. 936, 528 U.S. 1117, 145 L.Ed.2d 814.—Civil R 142.

E.D.N.Y. 1992. Consideration of a defendant's status as a deportable alien did not impermissibly inject "national origin" considerations into the sentencing determination, as "national origin" was not synonymous with "alienage." 28 U.S.C.A. § 994(d); Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; U.S.S.G. §§ 2L1.1(b)(3), 5H1.10, p.s., 18 U.S.C.A.App.—*U.S. v. Restrepo*, 802 F.Supp. 781, vacated 999 F.2d 640, certiorari denied 114 S.Ct. 405, 510 U.S. 954, 126 L.Ed.2d 352.—Sent & Pun 117, 804.

E.D.Pa. 1997. For purpose of determining whether particular conduct constitutes discrimination on basis of national origin in violation of § 1983, term "national origin" on its face refers to country where person was born, or, more broadly, country from which his or her ancestors came. 42 U.S.C.A. § 1983.—*Nicole K. By and Through Peter K. v. Upper Perkiomen School Dist.*, 964 F.Supp. 931.—Civil R 104.2.

E.D.Pa. 1975. Term "national origin," within equal employment provision prohibiting discrimination based upon national origin, refers not to alienage, but to country where a person was born, or more broadly, country from which his or her ancestors came. Civil Rights Act of 1964, § 703, 42 U.S.C.A. § 2000e-2.—*Jones v. United Gas Imp. Corp.*, 68 F.R.D. 1.—Civil R 142.

W.D.Pa. 1974. "Race" and "national origin" may unequivocally be said to be "suspect criteria" within rule that where suspect criteria are involved, legislative differentiation is constitutionally permissible only if it can pass test of "rigid judicial scrutiny." 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 14.—*Samuel v. University of Pittsburgh*, 375 F.Supp. 1119, appeal dismissed 506 F.2d 355, reversed in part 538 F.2d 991.—Const Law 208(3).

W.D.Tex. 1971. Refusal of employer to hire resident alien because of citizenship was prohibited by Civil Rights Act of 1964 as discrimination on basis of "national origin." Civil Rights Act of 1964, § 703(a) (1), 42 U.S.C.A. § 2000e-2(a) (1).—*Espinoza v. Farah Mfg. Co.*, 343 F.Supp. 1205, reversed 462 F.2d 1331, certiorari granted 93 S.Ct. 1920, 411 U.S. 946, 36 L.Ed.2d 408, affirmed 94 S.Ct. 334, 414 U.S. 86, 38 L.Ed.2d 287.—Civil R 142.

E.D.Va. 1998. An employee of a corporation, who was a resident of the United States at the time he was hired, was not afforded disparate treatment because of "national origin," when he was not given 90 days notice of termination, as was done with employees who were residents or domiciliaries of other countries at the time they were hired; "national origin" referred to the country in which a person was born, or from which his ancestors came, rather than the country of current residence. Civil Rights Act of 1964, § 703(a), as amended, 42 U.S.C.A. § 2000e-2(a).—*Barnett v. Technology Intern., Inc.*, 1 F.Supp.2d 572.—Civil R 142.

N.Y.A.D. 3 Dept. 1983. Term "national origin" in human rights law applies to ancestry and must be applied with equal effect to individual's maternal line of ancestry as well as his paternal line. *McKin-*

ney's Executive Law §§ 292, subd. 8, 296, 296-a.—New York State Div. of State Police v. McCall, 470 N.Y.S.2d 916, 98 A.D.2d 921.—Civil R 104.2.

N.Y.Sup. 1985. Newly elected town supervisor's discharge of employee of town highway department who was son of former town supervisor who was political adversary of new town supervisor was not a discharge from employment because of "national origin," even though statutory definition of national origin includes "ancestry," and thus, the discharge was not an unlawful discriminatory employment practice. McKinney's Executive Law §§ 292, subd. 8, 296, subd. 1(a), 300.—Ingalls v. Town of Lyndon, 486 N.Y.S.2d 659, 127 Misc.2d 442.—Civil R 146.

NATIONAL ORIGIN DISCRIMINATION

Alaska 2001. Permanent Fund Dividend (PFD) eligibility statute restricting alien PFD eligibility to those who are "lawfully admitted for permanent residence in the United States" does not constitute "national origin discrimination" under Human Rights Act; statute does not discriminate based on cultural characteristics, ancestry, or country of origin, nor does statute have effect of national origin discrimination. AS 18.80.255, 43.23.005(a)(5)(B).—State, Dept. of Revenue v. Andrade, 23 P.3d 58.—Civil R 111.

Alaska 2001. "National origin discrimination" prohibited by Human Rights Act is discrimination based on individual's (or his or her ancestor's) place of origin, or cultural characteristics associated with specific places of origin. AS 18.80.255.—State, Dept. of Revenue v. Andrade, 23 P.3d 58.—Civil R 104.2.

NATIONAL OR INTERNATIONAL LABOR ORGANIZATION

C.A.D.C. 1950. Under the Labor Management Relations Act providing that National Labor Relations Board shall not issue complaint on unfair labor charges unless non-Communist affidavits are filed by officers of a "national or international labor organization" of which complaining organization is affiliate or constituent unit, quoted phrase did not include American Federation of Labor in its relation to three locals and an international union in which neither Federation nor its officers had authority to call strikes, or participate in collective bargaining. National Labor Relations Act, §§ 2(5), 8(a) (1, 5), 9(h), as amended by Labor Management Relations Act, 1947, 29 U.S.C.A. §§ 152(5), 158(a)(1, 5), 159(h).—West Tex. Utilities Co. v. N.L.R.B., 184 F.2d 233, 87 U.S.App.D.C. 179, certiorari denied West Texas Utilities Company, Inc. v. National Labor Relations Board., 71 S.Ct. 999, 341 U.S. 939, 95 L.Ed. 1366, rehearing denied 72 S.Ct. 21, 342 U.S. 843, 96 L.Ed. 637.—Labor 193.1.

NATIONAL PARK

Minn. 1998. St. Croix National Scenic Riverway, which was administered by Secretary of Interior through National Park Service as part of National Park System, was "national park" within meaning of statute exempting certain property within national parks from taxation. M.S.A. § 273.19, subd. 4.—

Frandsen v. County of Chisago, 573 N.W.2d 684.—Tax 213.

NATIONAL PARK SYSTEM

D.D.C. 1993. Memorial parkway which connected George Washington's burial place with memorial bridge was part of "national park system" within meaning of National Park Service Organic Act. Public Lands and National Parks Act of 1983, § 1 et seq., 16 U.S.C.A. § 1 et seq.; 16 U.S.C.A. § 1c.—Daingerfield Island Protective Soc. v. Babbitt, 823 F.Supp. 950, affirmed in part 15 F.3d 1159, 304 U.S.App.D.C. 428, opinion supplemented 40 F.3d 442, 309 U.S.App.D.C. 186, rehearing and suggestion for rehearing denied, affirmed 40 F.3d 442, 309 U.S.App.D.C. 186, rehearing and suggestion for rehearing denied, and rehearing and suggestion for rehearing denied.—U S 57.

NATIONAL RATES

D.Utah 1987. In determining reasonable rates for attorneys in successful securities class action, district court would look essentially to requested rates as set forth in submissions of counsel, recognizing that firms were based in several different communities, rates established in other jurisdictions in similar litigation, especially cases where courts considered "national rates" and cases involving precise lawyers and firms involved in instant case, standard rates established in the Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 260, and district court's own experience in practicing for 30 years in the community of the forum as well as nationally.—In re WICAT Securities Litigation, 671 F.Supp. 726.—Sec Reg 157.1.

NATIONAL REGIME

Cal. 1967. "National regime" concept of alien's status connotes situation in which nation treats aliens on terms of equality with its own citizens.—In re Chichernea's Estate, 424 P.2d 687, 57 Cal. Rptr. 135, 66 Cal.2d 83.—Aliens 3.

NATIONALS

S.D.Fla. 1981. Cuban refugees transferred through defendant's efforts were "nationals" for purposes of criminal prosecution under the Trading With the Enemy Act. Trading With the Enemy Act, §§ 1 et seq., 5(b), 16 as amended 50 U.S.C.A.App. §§ 1 et seq., 5(b), 16.—U.S. v. Fernandez-Pertierra, 523 F.Supp. 1135.—War 12.

S.D.N.Y. 1944. Business firm owned by German government and other firms under its control were "nationals" of a foreign country within Executive Order relating to transactions in foreign exchange with nationals of certain foreign countries and Executive Order authorizing Alien Property Custodian to vest in himself the business properties of nationals of designated enemy countries. Trading with the Enemy Act, § 5(b) as amended 50 U.S.C.A.App. § 5(b); Executive Order 8389, 12 U.S.C.A. § 95 note; Executive Order 9095, as amended by Executive Order 9193, 50 U.S.C.A.App. § 6

note.—*Draeger Shipping Co. v. Crowley*, 55 F.Supp. 906.—War 12.

NATIONAL SAFETY

C.A.2 (N.Y.) 1961. Strike affecting at least 45½ percent of United States merchant marine affected “substantial part” thereof and constituted serious risk to “national safety” within national emergency provisions of Labor Management Relations Act so as to authorize injunction to restrain strike. Labor Management Relations Act, 1947, § 208(a)(i), 29 U.S.C.A. § 178(a)(i).—*U. S. v. National Marine Engineers’ Beneficial Ass’n*, 294 F.2d 385.—Labor 863.

NATIONAL SEA CLAMMERS DOCTRINE

D.Wyo. 2002. “*National Sea Clammers doctrine*,” under which § 1983 claim may be precluded by comprehensive statutory enforcement scheme, does not preclude litigant from bringing § 1983 claim based on independent constitutional violations. 42 U.S.C.A. § 1983.—*Swartz v. Beach*, 229 F.Supp.2d 1239.—Civil R 194.

NATIONAL SECURITIES EXCHANGE

S.D.N.Y. 1990. National Association of Securities Dealers Automated Quotation System (NASDAQ), an over-the-counter market, was not a “national securities exchange” within meaning of Securities Exchange Act section prohibiting transactions for the purpose of creating a false and misleading appearance of active trading in any security registered on a national securities exchange. Securities Exchange Act of 1934, § 9(a), 15 U.S.C.A. § 78i(a).—*Cowen & Co. v. Merriam*, 745 F.Supp. 925.—Sec Reg 60.13.

W.D.N.C. 1991. Definition of “exchange” contained in Securities Exchange Act of 1934 did not apply to national over-the-counter stock exchange and, thus, provision of Act prohibiting manipulation of stock sold through “national securities exchange” did not apply to alleged manipulation of stock sold through national over-the-counter exchange. Securities Exchange Act of 1934, §§ 3, 9, 15 U.S.C.A. §§ 78c, 78i.—*Martin v. Prudential-Bache Securities, Inc.*, 820 F.Supp. 980, affirmed *Juntti v. Prudential-Bache Securities, Inc.*, 993 F.2d 228.—Exchanges 2; Sec Reg 40.10, 60.13.

E.D.Pa. 1972. Over-the-counter market is not a “national securities exchange” under Securities Exchange Act. Securities Exchange Act of 1934, §§ 6(a), 15, 15 U.S.C.A. §§ 78f(a), 78o.—*Dorfman v. First Boston Corp.*, 336 F.Supp. 1089.—Exchanges 2; Sec Reg 40.10.

NATIONAL SECURITY

U.S.Dist.Col. 1956. In 1950 Act authorizing dismissal of government employees in interest of “national security,” quoted phrase was intended to comprehend only those activities of government that are directly concerned with protection of the nation from internal subversion or foreign aggression, and not those which contribute to strength of the nation only through their impact on general

welfare. 5 U.S.C.A. §§ 22-1 to 22-3.—*Cole v. Young*, 76 S.Ct. 861, 351 U.S. 536, 100 L.Ed. 1396.—U S 36.

N.Y.Sup. 1954. Courts are duty bound to protect national security, but, under the constitution and laws, “national security” is not based upon military secrecy alone but upon true administration of justice as well.—*Ticon Corp. v. Emerson Radio & Phonograph Corp.*, 134 N.Y.S.2d 716, 206 Misc. 727.—Const Law 67.

NATIONAL SECURITY INTERESTS

D.D.C. 1980. Provisions of National Security Act and Central Intelligence Agency Act governing protection of intelligence sources and methods from unauthorized disclosure further “national security interests” within meaning of the *Ray* rule that courts must accord substantial weight to agency criteria, as applied to Freedom of Information Act exemption for matters specifically exempted from disclosure by statute. 5 U.S.C.A. § 552(b)(3); National Security Act of 1947, § 102(d)(3) as amended 50 U.S.C.A. § 403(d)(3); Central Intelligence Agency Act of 1949, § 50 U.S.C.A. § 403g.—*Gardels v. Central Intelligence Agency*, 484 F.Supp. 368, reversed 637 F.2d 770, 205 U.S.App.D.C. 224, on remand 510 F.Supp. 977, affirmed 689 F.2d 1100, 223 U.S.App.D.C. 88.—Records 62.

NATIONALS OF THE PEOPLES’ REPUBLIC OF CHINA

C.A.9 (Cal.) 1993. Alien who was native of Hong Kong and entered United States on British passport identifying him as British Dependent Territories Citizen from Hong Kong was not entitled to relief from deportation under executive order directing deferral of deportation for certain nationals of People’s Republic of China (PRC), even though he had obtained PRC passport; executive order’s reference to “Nationals of the Peoples’ Republic of China” did not include Hong Kong residents.—*Wong v. Ilchert*, 998 F.2d 661.—Aliens 53.10(1).

NATIONALS OF THE UNITED STATES

N.D.Ill. 1999. Former owners of property in Poland, who were Polish nationals when their property was expropriated during or shortly after World War II, were not “nationals of the United States,” within meaning of treaty between United States and Poland regarding settlement of expropriation claims of United States nationals.—*Haven v. Rzeczpospolita Polska*, 68 F.Supp.2d 947, affirmed 215 F.3d 727, certiorari denied 121 S.Ct. 573, 531 U.S. 1014, 148 L.Ed.2d 490.—Treaties 8; War 34.

NATIONAL SOVEREIGNTY

C.A.4 (Md.) 1995. “National sovereignty” is the undivided power of a people and their government within a territory, inherent in which are the overarching rights of the nation to defend itself from outside threats, to act in relation to other nations, and to secure its territory and assets.—*U.S. v. Oriakhi*, 57 F.3d 1290, certiorari denied 116 S.Ct. 400, 516 U.S. 952, 133 L.Ed.2d 319.—Intern Law 8.

NATIONAL STANDARD

C.A.7 (Ill.) 1986. Appropriate standard of medical practice at military medical was what reasonable physician would disclose under similar circumstances, that is the "reasonable physician standard," or "national standard"; "bill of rights" for hospital patients did not create legally binding medical standards on hospital.—*Pardy v. U.S.*, 783 F.2d 710.—Health 656.

NATIONAL STANDARD OF CARE

C.A.1 (Puerto Rico) 1994. In order to establish medical malpractice case in Puerto Rico, claimant must show that physician has failed to observe "national standard of care" defined as that level of care which, recognizing modern means of communication and education, meets professional requirements generally acknowledged by medical profession.—*Lama v. Borrás*, 16 F.3d 473.—Health 618.

NATIONAL STOLEN PROPERTY ACT

C.A.9 (Cal.) 1987. Filled-in airline "tickets" were "goods," "wares" or "merchandise" within meaning of provision of "National Stolen Property Act" making it a crime to transport in interstate or foreign commerce "goods, wares, or merchandise" of value of \$5000 or more knowing the same to be stolen, converted or taken by fraud. 18 U.S.C.A. § 2314.—*U.S. v. Weinstein*, 834 F.2d 1454, post-conviction relief denied 931 F.2d 899.—Rec S Goods 2.

NATIONAL SYMBOLS

D.D.C 1964. As used in Lanham Act, prohibiting registration of mark if it falsely suggested connection with "national symbols", quoted phrase included anything that by reason of appearance and sound immediately suggested name of country for which symbol stood; but English Royal House of Windsor was not such national symbol. Lanham Trade-Mark Act, § 2(a), 15 U.S.C.A. § 1052(a).—*W. H. Snyder & Sons, Inc. v. Ladd*, 227 F.Supp. 185.—Trade Reg 156.

NATIONAL TRANSPORTATION POLICY

E.D.Mo. 1962. "National transportation policy" within Interstate Commerce Act provision requiring that rates of carriers shall not be held up to particular level to protect traffic of other modes of transportation, giving due consideration to objectives of national transportation policy, referred to Act of September 18, 1940 amending the Interstate Commerce Act. Interstate Commerce Act, § 15a, 49 U.S.C.A. § 15a.—*St. Louis-San Francisco Ry. Co. v. U.S.*, 207 F.Supp. 293.—Commerce 85.14.

NATIONAL TREATMENT

C.A.9 (Cal.) 1995. Principle of "national treatment" implicates rule of territoriality in which applicable law in copyright infringement suit is a copyright law of the state in which the infringement occurred, not that of the state of which the author is a national or in which the work was first publish-

ed.—*Creative Technology, Ltd. v. Aztech System Pte., Ltd.*, 61 F.3d 696.—Copyr 79.

C.A.5 (Tex.) 1963. Imposition of manufacturer's excise tax on initial sales in United States of used automobiles imported from Germany did not constitute failure to accord "national treatment" to product of Germany as required by Treaty of Friendship, Commerce and Navigation with Germany. 26 U.S.C.A. (I.R.C.1954) § 4061.—*Smith v. U.S.*, 319 F.2d 776.—Treaties 8.

S.D.N.Y. 1995. "National treatment" insures that substantive law of country in which copyright infringement is alleged will govern claim, even if law of that country differs from law of country in which the work was created.—*Murray v. British Broadcasting Corp.*, 906 F.Supp. 858, affirmed 81 F.3d 287.—Copyr 51.

N.Y. 1993. "National treatment" under Treaty of Friendship, Commerce and Navigation between United States and Japan, which provides that nationals of either party shall be accorded "national treatment" in application of laws and regulations within territories of other party that establish pecuniary compensation arising out of employment, is not limited to resident aliens, but, rather, includes all foreign nationals. Treaty of Friendship, Commerce and Navigation, Art. XII, 63 Stat. 2255.—*Mizugami v. Sharin West Overseas, Inc.*, 599 N.Y.S.2d 480, 81 N.Y.2d 363, 615 N.E.2d 964.—Treaties 8.

NATIONAL UNION

U.S. 1951. A labor organization which was regarded in labor circles as a federation rather than a national or international union, but which was admittedly a labor union and one of nationwide jurisdiction, operation and influence, was a "national union" within provision of Labor Management Relations Act requiring the officers of any national or international labor organization to file non-Communist affidavits. National Labor Relations Act, § 9(h), as amended by Labor Management Relations Act, 1947, 29 U.S.C.A. § 159(h).—*N.L.R.B. v. Highland Park Mfg. Co.*, 71 S.Ct. 758, 341 U.S. 322, 95 L.Ed. 969.—Labor 81.

NATION AS A WHOLE

C.A.3 (Del.) 1969. The "nation as a whole" may be a "section of the country" within Clayton Act provision prohibiting corporation engaged in commerce from acquiring, directly or indirectly, the whole or any part of the stock of one or more corporations engaged in commerce, where in any line of commerce in any section of the country the effect of such acquisition may be substantially to lessen competition or to create a monopoly. (Per Stahl, Circuit Judge, with one circuit judge concurring in result). Clayton Act, § 7 as amended 15 U.S.C.A. § 18.—*Allis-Chalmers Mfg. Co. v. White Consol. Industries, Inc.*, 414 F.2d 506, certiorari denied 90 S.Ct. 567, 396 U.S. 1009, 24 L.Ed.2d 501.—Monop 20(7).

NATIONS

U.S.Tenn. 1878. "Nations" or "states" are bodies politic, societies of men united together for the promotion of their mutual safety and advantage by the joint efforts of their combined strength, susceptible of obligations and rights.—*Keith v. Clark*, 97 U.S. 454, 3 Tenn.Cas. 59, 7 Otto 454, 3 Shan. 59, 2 Leg.Rep. 234, 24 L.Ed. 1071.—States 1.

Va. 1894. "Nations," as defined by Vattel, are bodies politic; societies of men united together for the purpose of promoting their mutual safety and advantage by the joint effort of their combined strength.—*Robinett v. Robinett's Heirs*, 19 S.E. 845, 1 Va.Dec. 834, reversed 22 S.E. 856, 92 Va. 124.

NATIVE

C.A.7 (Ill.) 1998. Forest Service's interpretation of term "native," as used in regulation requiring it to maintain viable populations of existing native species, as meaning native to ecological restoration project area at issue, and as meaning existing in natural state in area, rather than introduced by man in recent times, was reasonable, and thus supported Forest Service's determination that regulation did not bar project, even though it would have adverse effects on shortleaf pines which were first planted in project area in 1930s and 1940s. 36 C.F.R. § 219.19.—*Glisson v. U.S. Forest Service*, 138 F.3d 1181, certiorari denied 119 S.Ct. 553, 525 U.S. 1022, 142 L.Ed.2d 460.—Woods 8.

C.C.A.2 (N.Y.) 1947. A person who was born at Metz in Province of Lorraine, which at time of his birth was part of Germany but which was restored to France by Treaty of Versailles of 1918, and who thereafter became a French citizen, was a "native" of France and not of Germany within alien enemy act, and hence could not be interned and deported as a "native of hostile nation". 50 U.S.C.A. § 21.—*U.S. ex rel. Gregoire v. Watkins*, 164 F.2d 137.—War 11.

Tex.Civ.App.—Beaumont 1955. A person is a "native" of the state of his birth.—*McBride v. Gulf Oil Corp.*, 292 S.W.2d 151, ref. n.r.e.—Citiz 11.

NATIVE ALLOTMENTS

Alaska App. 1997. "Native allotments" are deeded as homesteads to Alaska Native.—*Jones v. State*, 936 P.2d 1263.—Indians 13(1).

NATIVE AMERICAN

D.Or. 2002. For purposes of Native American Graves Protection and Repatriation Act (NAG-PRA), term "Native American" requires, at a minimum, a cultural relationship between remains or other cultural items and a present-day tribe, people, or culture indigenous to the United States. Native American Graves Protection and Repatriation Act, § 2(9), 25 U.S.C.A. § 3001(9).—*Bonnichsen v. U.S.*, 217 F.Supp.2d 1116.—Indians 6.2.

NATIVE FROGS

Minn. 1946. "Native frogs", referred to in statute regulating the taking and possession of native frogs, are frogs native to the state in the sense that they were produced and caught within the state, and do not include frogs caught and bought in a neighboring state. *Laws* 1943, c. 621, § 1.—*State v. Prickett*, 21 N.W.2d 474, 221 Minn. 179.—Game 7.

NATIVE FRUITS

Del.Gen.Sess. 1926. "Native fruits" from which wine may be manufactured for personal domestic consumption, means fruit grown in state (29 Del. Laws, c. 10, par. 5).—*State v. Pantolome*, 138 A. 401, 33 Del. 255, 3 W.W.Harr. 255.—Int Liq 137.

NATIVE INHABITANT

N.Y.A.D. 2 Dept. 1940. Where, under laws of Palestine, rabbinic court had jurisdiction in matters matrimonial of "native inhabitants" of Syria, a native of Syria, residing in New York, by sending a divorce from New York to Palestine did not thereby make himself a "native inhabitant" of Syria so as to give the rabbinic court jurisdiction under local law to grant a divorce, and hence, divorce granted by rabbinic court being invalid, subsequent marriage of wife which was contracted in Palestine was void.—*Albeg v. Albeg*, 18 N.Y.S.2d 719, 259 A.D. 744.—Divorce 358.

NATIVE INHABITANTS

N.Y.A.D. 2 Dept. 1940. Where, under laws of Palestine, rabbinic court had jurisdiction in matters matrimonial of "native inhabitants" of Syria, a native of Syria, residing in New York, by sending a divorce from New York to Palestine did not thereby make himself a "native inhabitant" of Syria so as to give the rabbinic court jurisdiction under local law to grant a divorce, and hence, divorce granted by rabbinic court being invalid, subsequent marriage of wife which was contracted in Palestine was void.—*Albeg v. Albeg*, 18 N.Y.S.2d 719, 259 A.D. 744.—Divorce 358.

NATIVE OF A HOSTILE NATION

D.N.D. 1944. A person born in foreign country need not also have been born within allegiance of government thereof to be "native" of such country within Alien Enemy Act, and the term "native of a hostile nation" in such act includes one born of native-citizen parents at place now recognized by United States government as component part of a nation with which United States is at war. Alien Enemy Act, 50 U.S.C.A. § 21.—*U. S. ex rel. Umecker v. McCoy*, 54 F.Supp. 679, appeal dismissed 144 F.2d 354.—War 11.

NATIVE OF HOSTILE NATION

C.C.A.2 (N.Y.) 1947. A person who was born at Metz in Province of Lorraine, which at time of his birth was part of Germany but which was restored to France by Treaty of Versailles of 1918, and who thereafter became a French citizen, was a "native" of France and not of Germany within alien enemy

act, and hence could not be interned and deported as a "native of hostile nation". 50 U.S.C.A. § 21.—U.S. ex rel. Gregoire v. Watkins, 164 F.2d 137.—War 11.

S.D.N.Y. 1946. A person born at Metz in Province of Lorraine, which at time of his birth was part of Germany but which was restored to France by Treaty of Versailles of 1918, who became a French citizen, was a "native" of France and not of Germany within Alien Enemy Act, and hence could not be interned as a "native of hostile nation". 50 U.S.C.A. § 21; Proclamation Dec. 8, 1941, No. 2526, U.S.Code Cong.Service 1941, p. 889.—U.S. ex rel. Gregoire v. Watkins, 69 F.Supp. 889, affirmed 164 F.2d 137.—War 11.

NATIVE OIL OR GAS

N.Y.Sup. 1989. Gas produced by well which gas company sought to condemn which had not migrated from another storage field or was gas which had been injected in the field of which the well was a part fell within the definition of "native oil or gas."—National Fuel Gas Supply Corp. v. Cunningham Natural Gas Corp., 548 N.Y.S.2d 588, 145 Misc.2d 825, modified 572 N.Y.S.2d 152, 174 A.D.2d 991.—Em Dom 87.

NATIVES

C.A.9 (Alaska) 1978. The term "natives" as used in provision of the Alaska Native Claims Settlement Act providing that money in the Alaska Native Fund shall be distributed on the basis of the relative numbers of "natives" enrolled in each region refers only to stockholders of the regional corporations. Alaska Native Claims Settlement Act, § 6(c), 43 U.S.C.A. § 1605(c).—Doyon, Ltd. v. Bristol Bay Native Corp., 569 F.2d 491, certiorari denied 99 S.Ct. 352, 439 U.S. 954, 58 L.Ed.2d 345.—U S 105.

NATIVE TREE

Ga. 1980. "Native tree" as used in section of Shore Assistance Act establishing area of jurisdiction under such Act is any tree, indigenous to the area, whether it sprang up naturally or was planted. Code, § 43-3003(i).—Rolleston v. State, 266 S.E.2d 189, 245 Ga. 576.—Nav Wat 41(1).

NATIVE WINE

Mass. 1903. The words "native wine," as used in Rev.Laws, c. 100, § 1, prohibiting the sale of intoxicating liquor without a license except "sales by the makers thereof of native wine or of cider manufactured in this commonwealth," mean wine made in the commonwealth, and not wine made in any of the states of the Union.—Commonwealth v. Petranich, 66 N.E. 807, 183 Mass. 217.—Int Liq 151.

NATURAL

C.A.D.C. 1975. In determining whether gas is "natural" or "artificial" within purview of Natural Gas Act, language of statute requires court to look to origin of gas, not to its physical characteristics.

Natural Gas Act, § 2(5), 15 U.S.C.A. § 717a(5).—Henry v. Federal Power Commission, 513 F.2d 395, 168 U.S.App.D.C. 137.—Gas 2.

C.A.1 (Puerto Rico) 1950. Employees of Puerto Rico tobacco marketing cooperative association, engaged in stemming leaf tobacco and handling tobacco subsequent thereto were not engaged in preparing an agricultural commodity in "raw" or "natural" state for market, within exemption from wage and hour provisions of Fair Labor Standards Act. Fair Labor Standards Act of 1938, § 13(a)(10), 29 U.S.C.A. § 213(a)(10).—Puerto Rico Tobacco Marketing Co-op. Ass'n v. McComb, 181 F.2d 697.—Labor 1224.

C.C.A.2 (N.Y.) 1939. "Natural person" within Bankruptcy Act provision that any "natural person" with specified exceptions, as well as certain corporations, may be adjudged an involuntary bankrupt, does not exclude one who has been adjudged a lunatic, but is used merely as a contrast with "person" as elsewhere used to include both individuals and corporations, the adjective "natural" being introduced to exclude artificial persons. Bankr.Act §§ 1, sub. 23, 4, 11 U.S.C.A. §§ 1, sub. 23, 22.—In re Evanishyn, 107 F.2d 742, 125 A.L.R. 1290.—Bankr 2222.1.

W.D.Pa. 1986. Under Pennsylvania law, "earth movement" exclusion in a policy excluded coverage on two school buildings allegedly damaged by mine subsidence, which occurred through "natural" and spontaneous processes of deterioration and decay; term "earth movement" in the exclusion meant spontaneous, natural, catastrophic earth movement, and not movement brought by other causes.—Peters Tp. School Dist. v. Hartford Acc. and Indem. Co., 643 F.Supp. 518, reversed in part, vacated in part 833 F.2d 32.—Insurance 2144(3).

W.D.Pa. 1973. Within policy which provided business interruption coverage in the event of prevention of business by accident and which provided that accident should not mean wear and tear, "wear and tear" meant that ordinary and natural deterioration or abrasion which an object experiences by its expected contacts between its component parts and outside objects during the period of its natural life expectancy, and addition of modifiers such as "ordinary" or "natural" would have been redundant.—Cyclops Corp. v. Home Ins. Co., 352 F.Supp. 931.—Insurance 2146.

Ariz.App.Div. 2 1973. When a condition on land is created by the action of man, the condition is "artificial" and not "natural" for purpose of application of the attractive nuisance doctrine.—Clarke v. Edging, 512 P.2d 30, 20 Ariz.App. 267.—Neglig 1175.

Ark. 1938. The effect of statutes governing adoption is to invest adopted child with all legal attributes of a natural child, and to make the terms "adopted" and "natural" interchangeable or synonymous, where the relationship is questioned. Crawford & Moses' Dig. §§ 254, 255.—Dean v. Smith, 113 S.W.2d 485, 195 Ark. 614.—Adop 18.

Cal. 1993. Term "natural" under Uniform Parentage Act section, providing that parent and child relationship may be established between child and natural mother, simply refers to mother who is not adoptive mother. West's Ann.Cal.Civ.Code § 7003(1).—Johnson v. Calvert, 851 P.2d 776, 19 Cal.Rptr.2d 494, 5 Cal.4th 84, certiorari denied 114 S.Ct. 206, 510 U.S. 874, 126 L.Ed.2d 163, certiorari dismissed Baby Boy J. v. Johnson, 114 S.Ct. 374, 510 U.S. 938, 126 L.Ed.2d 324.—Parent & C 1.

Cal. 1944. Use of word "natural" by Governor in commuting prisoner's death sentence on condition that he be imprisoned during term of his "natural life", without more, could not be construed as indicating intention that prisoner should not be entitled to privilege of parole law. Pen. Code, §§ 671, 1168, 3046.—Ex parte Stewart, 149 P.2d 689, 24 Cal.2d 344.—Pardon 28.

Cal. 1939. The word "artificial" is in opposition to the word "natural."—California Cas. Indem. Exchange v. Industrial Acc. Commission of Cal., 90 P.2d 289, 13 Cal.2d 529.

Fla.App. 4 Dist. 1989. Without reference to dictionary definition, and in absence of definition in policy, ordinary person when purchasing accidental death and dismemberment policy would simply consider that policy does not cover death by "natural" causes or, perhaps, suicide, but that death is "accidental" if physically caused by events and conditions that are external to the body.—Buck v. Gulf Life Ins. Co., 548 So.2d 715, review denied 560 So.2d 233.—Insurance 2590(2).

Iowa 1995. "Natural," for purposes of determining whether one event is natural result of another in tort action, refers to consequences which are normal, not extraordinary, not surprising in light of ordinary experience; the phrase therefore appears to come out as equivalent of test of foreseeability, of consequences within scope of original risk, so that likelihood of their occurrence was factor in making defendant negligent in first instance.—City of Cedar Rapids v. Municipal Fire and Police Retirement System of Iowa, 526 N.W.2d 284.—Neglig 386, 387.

Kan. 1907. For the purpose of civil liability, those consequences, and those only, are deemed "natural" and probable which a person of average competence and knowledge, being in the like case with the person whose conduct is complained of, and having the like opportunities of observation, might be expected to foresee as likely to follow such conduct. The doctrine of "natural and probable" consequences is illustrated in the law of negligence, and there the substance of the wrong itself is failure to act with due foresight. The negligent delay of a carrier in moving goods intrusted to it for transportation, not so unreasonable as to amount to a conversion, would not render it liable for the loss of the goods after they have been carried to their destination, if they are there destroyed by an act of God before delivery.—Rodgers v. Missouri Pac. Ry. Co., 88 P. 885, 75 Kan. 222, 10 L.R.A.N.S. 658, 121 Am.St.Rep. 416, 12 Am. Ann. Cas. 441.

La. 1902. Possession, following the registry of title, without any actual occupancy of the premises, is called "civil" or "constructive" possession, as distinguished from "natural" or "corporeal" possession. Civ. Code arts. 3427, 3428, 3431;—Ashley Co. v. Bradford, 33 So. 634, 109 La. 641.

La.App. 1 Cir. 1991. Fish eye lens in canned tuna was not an object "natural" to tuna, for which canner would have no liability under strict liability theory.—Johnson v. South Pacific Canning Co., 580 So.2d 556.—Food 25.

La.App. 1 Cir. 1975. "Natural" as used in statute providing that natural or necessary servitudes do not prescribe refers to servitudes originating from natural situation of places, while "necessary" refers to those servitudes imposed by law. LSA—C.C. arts. 660–708, 795.—Picard v. Shaubhut, 324 So.2d 517, writ not considered 326 So.2d 380.—Ease 32.

Mich. 1936. Circuit court held to have jurisdiction to fix and determine "natural" water level of lake under statute giving board of supervisors right to maintain water in lake at its natural height and level, word "natural" meaning normal. Comp. Laws 1929, § 3837.—In re Board of Sup'rs of Lenawee County, 268 N.W. 750, 276 Mich. 591.—Nav Wat 6.

Minn. 1966. Consequences following in unbroken sequence, without intervening efficient cause, from original negligent act are "natural" and "proximate," and original wrongdoer is responsible for those consequences though he could not have foreseen the particular results actually following.—Schulz v. Feigal, 142 N.W.2d 84, 273 Minn. 470, 23 A.L.R.3d 1324.—Neglig 384, 387.

Mo. 1947. Aggravation of prior impaired condition by fall was not within instruction precluding recovery for "natural" result of prior impaired condition.—Quigley v. St. Louis Public Service Co., 201 S.W.2d 169.—Trial 286.

N.J.Err. & App. 1930. Under the rule of law requiring that damages chargeable to a wrongdoer must be the natural and proximate effects of his delinquency, the term "natural" imports that they are such as might reasonably have been foreseen, or such as occur in an ordinary state of things.—Schlenger v. Weinberg, 150 A. 434, 107 N.J.L. 130, 69 A.L.R. 738.

N.J.Err. & App. 1910. Damages recoverable from a wrongdoer must be the natural and proximate effects of its delinquency; the term "natural" importing such as might reasonably have been foreseen, and "proximate" indicating that there must be no other culpable and efficient agency intervening between the wrongdoer's acts and the loss.—Smith v. Public Service Corp. of New Jersey, 75 A. 937, 78 N.J.L. 478, 49 Vroom 478, 20 Am. Ann. Cas. 151.—Damag 20.

N.J.Super.A.D. 1956. Damages chargeable to a wrongdoer must be shown to be the "natural" and "proximate" effects of his delinquency, and the term "natural" imports that they are such as might reasonably have been foreseen, such as occur in an ordinary state of things, and the term "proximate"

indicates that there must be no other culpable and efficient agency intervening between the dereliction and the loss.—*Mergel v. Colgate-Palmolive-Peet Co.*, 125 A.2d 292, 41 N.J.Super. 372, certification denied 126 A.2d 392, 22 N.J. 453.—*Neglig* 386, 387.

N.J.Sup. 1919. The damages chargeable to a wrongdoer must be shown to be the natural and proximate effects of his delinquency, and the term "natural" imports such as might reasonably have been foreseen, such as occur in the ordinary state of things, and the term "proximate" indicates that there must be no other culpable and efficient agency intervening between the defendant's dereliction and the loss.—*Justesen v. Pennsylvania R. Co.*, 106 A. 137, 92 N.J.L. 257.—*Damag* 19.

N.M. 1998. Testator's devise of farm to non-relative beneficiary was "unnatural," and conditional devise of the farm in prior will to testator's wife was "natural," for purposes of undue influence analysis; wife, but not beneficiary, would inherit under laws of intestacy.—*Matter of Estate of Gersbach*, 960 P.2d 811, 125 N.M. 269, 1998-NMSC-013.—*Wills* 163(6).

N.Y.Sup. 1930. In covenant to maintain "normal" and "natural" flow of water, exclusive of "storm water," below point of diversion, by replacement from impounded storm waters above point, of amount of water equal to amount taken, "storm water" meant excess flow over mean flow during March, April, and May which could regularly be counted on.—*Adirondack Power & Light Corp. v. City of Little Falls*, 265 N.Y.S. 567, 148 Misc. 191.—*Waters* 156(2).

N.Y.Sup. 1930. In covenant to maintain "normal" and "natural" flow of water, exclusive of "storm water," below point of diversion, by replacement from impounded storm waters above point, of amount of water equal to amount taken, "storm water" meant excess flow over mean flow during March, April, and May which could regularly be counted on. "Storm water" is water that promptly runs off the surface into a stream after storms, although all water is storm water, because, whether denominated ground water, surface water, or storm water, it comes from the heavens in rain or snow storms. Broadly speaking, "storm water" includes the freshet flows of spring months brought about through the melting of snows, spring rains, and also the flows following on heavy rains in other months so far as they suddenly and temporarily raise the flow of the stream above the normal flow. "Normal flow" means flow that is not affected by "storm water." "Natural flow" is the flow of the stream unaffected by artificial conditions.—*Adirondack Power & Light Corp. v. City of Little Falls*, 265 N.Y.S. 567, 148 Misc. 191.

N.Y.Super. 1891. There is an observable distinction between "natural" and "artificial" causes of injury; that is, those resulting in ordinary course from causes beyond human control, and those created by voluntary choice or agency. Thus, if a person is taken sick and dies in his own house he is entitled to appropriate attendance therein and burial therefrom, and no one will be heard to complain,

for the consequences are natural, unavoidable, and such as every neighbor must in the nature of things expect and submit to. This is a lawful thing. But where the occupant of a house advertises and invites persons in all parts of the country to send dead bodies to his establishment to be temporarily stored, cut up, artistically confined, and furnished with elaborate funeral outfits, services, hearses, and carriages, human agency, acting in choice, makes a business of other people's misfortunes, and parades death in the presence of the neighbors to their pleasure or discomfort according to the view in which they regard such displays. This is objectionable and illegal.—*Rowland v. Miller*, 39 N.Y.St.Rep. 115, 15 N.Y.S. 701, affirmed 46 N.Y.St.Rep. 967, 18 N.Y.S. 793, 29 Jones & S. 163, affirmed 34 N.E. 765, 139 N.Y. 93.

Okl. 1952. In action for injuries sustained by plaintiff on whom coal car endgate fell, after car was admittedly negligently delivered with defective gate latch and thereafter wired into place by plaintiff's co-workers with wire they found hanging from latch, instruction, that an intervening event which occurs so naturally in the course of events that it might reasonably have been anticipated does not relieve original wrongdoer of liability, was not rendered misleading by omission of word "probable" in connection with the word "natural".—*Oklahoma City-Ada-Atoka Ry. Co. v. Crabtree*, 249 P.2d 445, 207 Okla. 327, 1952 OK 302.—*R R* 282(14).

Tenn.Ct.App. 1980. As used in pension plan afforded employees and certain beneficiaries by Memphis Light, Gas and Water Division, term "natural" would not be construed to mean only "legitimate" child of deceased worker.—*State ex rel. Smith v. Memphis Light, Gas and Water Division*, 602 S.W.2d 249.—*Pensions* 133.

Tex.Civ.App.—Dallas 1974. Under State Clean Air Act provision defining "air contaminant" as odors, etc., produced by processes other than "natural," "natural process" is one that occurs in nature and is affected or controlled by human devices only to extent normal and usual for particular area involved, and all other contaminants are "produced by processes other than natural" within meaning of the Act. *Vernon's Ann.Civ.St. art. 4477-5, § 1.03(1)*.—*Europak, Inc. v. Hunt County*, 507 S.W.2d 884.—*Environ Law* 256.

Tex.Civ.App.—Dallas 1943. "Natural" or "naturally" means arising under the ordinary operation of physical laws, produced in the course of nature, resulting in the ordinary course of things.—*Strong v. Aetna Cas. & Sur. Co.*, 170 S.W.2d 786.

Vt. 1952. The word "natural" means "normal", and therefore, under statute requiring Public Service Commission to ascertain natural maximum and minimum levels of lake, it was Commission's duty to find what were normal maximum and minimum levels. *Laws* 1951, No. 197, § 1.—*In re Lake Seymour*, 91 A.2d 813, 117 Vt. 367.—*Nav Wat* 34.

Vt. 1939. That Milk Control Act authorizes Milk Control Board to designate "natural marketing areas" in fixing milk prices does not render act unconstitutional as delegating legislative power to

Board, judicial notice being taken that a "natural marketing area" is a region within which milk is ordinarily sold in response to commercial demand. Laws 1937, No. 99, §§ 2, 5, 7; Const. c. 2, §§ 2, 5, 6. A "market" signifies the region in which any commodity can be sold; the geographical or economic extent of commercial demand, and "marketing" is a bringing or sending to market. The word "natural" means in accordance with or due to the conditions, events or circumstances of the case; in line with normal experience.—*State v. Auclair*, 4 A.2d 107, 110 Vt. 147.

Va. 1925. The word "natural" is not synonymous with "usual," and the former cannot be substituted for the latter in a lease. Thus, where a mining lease required the lessee to keep the houses, machinery and appliances in good reasonable repair, and return them back to the lessor at the expiration of the lease in good repair, except the usual wear and tear, it was not error to refuse an instruction that "usual wear and tear" excepted meant that lessee could be excused from the duty of returning the property in good repair, only to the extent that it had deteriorated from natural causes and from reasonable and proper use thereof in the conduct of the operation.—*Roberts Coal Co. v. Corder Coal Co.*, 129 S.E. 341, 143 Va. 133.—*Mines* 62.1.

Va. 1925. Word "natural" cannot be substituted for "usual" in lease exempting lessee from damages for usual wear and tear.—*Roberts Coal Co. v. Corder Coal Co.*, 129 S.E. 341, 143 Va. 133.—*Mines* 68(1).

Wis. 1908. An instruction in an action for services that no form of words is necessary to a contract, and that, if the "natural" inference from what appears to have passed between the parties is that their minds met presently in an agreement as the employee claims, a valid contract was made, whatever may have been the verbal expression used, is not erroneous because of the use of the word "natural," instead of the word "reasonable."—*Sicard v. Albenberg Co.*, 118 N.W. 179, 136 Wis. 622.—*Mast & S* 80(14).

Wyo. 1969. Fact that boundaries of area annexed were irregularly drawn because of objections of some landowners to annexation and that certain lands not included in the annexed area were generating and contributing to problems relating to public health, safety and welfare did not vitiate annexation proceeding on theory that area annexed did not constitute a "natural" part of annexing city. Secs. 15.1–55, 15.1–64, W.S.1957, C.1965.—*In re West Laramie*, 457 P.2d 498.—*Mun Corp* 29(4).

NATURAL ACCUMULATION

Mich.App. 1995. Brine that formed after road was salted and that later froze was "natural accumulation" for purposes of natural accumulation doctrine, and state transportation department had no obligation to remove such accumulation.—*Dykstra v. Department of Transp.*, 528 N.W.2d 754, 208 Mich.App. 390.—*Autos* 262.

Ohio App. 10 Dist. 1988. A "natural accumulation" of ice and snow is one which accumulates as a result of an act of nature, whereas an unnatural accumulation is one that results from an act of a person.—*Coletta v. University of Akron*, 550 N.E.2d 510, 49 Ohio App.3d 35.—*Neglig* 1133.

NATURAL ACCUMULATION DOCTRINE

Mich.App. 1997. Under "natural accumulation doctrine," governmental agency does not have obligation to remove natural accumulation of ice or snow from road, and thus, mere presence of snow or ice on highway in wintertime, which causes travelers difficulty, does not constitute negligence on part of governmental authority.—*Skogman v. Chippewa County Road Com'n*, 561 N.W.2d 503, 221 Mich.App. 351.—*Autos* 262.

Mich.App. 1995. Under "natural accumulation doctrine," state does not have obligation to remove natural accumulation of ice and snow from any location.—*Dykstra v. Department of Transp.*, 528 N.W.2d 754, 208 Mich.App. 390.—*Autos* 262.

Mich.App. 1994. "Natural accumulation doctrine" provides that neither municipality nor landowner has obligation to licensee to remove natural accumulation of ice or snow from any location, except where municipality or landowner, by taking affirmative action, has increased travel hazard to public.—*Morrow v. Boldt*, 512 N.W.2d 83, 203 Mich.App. 324, appeal denied 525 N.W.2d 456, 447 Mich. 995.—*Mun Corp* 773, 808(5); *Neglig* 1040(3).

Mich.App. 1990. "Natural accumulation doctrine" provides that neither municipality nor landowner has duty to licensee to remove natural accumulation of ice and snow from any location except where municipality or property owner has taken affirmative action to alter natural accumulation of ice and snow and in doing so increases hazard of travel for public or where party takes affirmative steps to alter condition of sidewalk itself, which in turn causes unnatural or artificial accumulation of ice on sidewalk.—*Hall v. Detroit Bd. of Educ.*, 465 N.W.2d 12, 186 Mich.App. 469.—*Mun Corp* 773, 808(5).

Mich.App. 1988. "Natural accumulation doctrine" provides that neither municipality nor landowner has obligation to licensee to remove natural accumulation of ice or snow from any location.—*Zielinski v. Szokola*, 423 N.W.2d 289, 167 Mich. App. 611, appeal denied.—*Mun Corp* 773, 808(5).

NATURAL ACCUMULATION RULE

Ill.App. 4 Dist. 1995. While judicially created rule, which has been codified by statute, provides that landowners, be they public or private, are free from duty to remove natural accumulation of snow and ice on their own property, under "natural accumulation rule" landowner who negligently performs ice and snow removal, adding to or creating new hazard, may be liable for resulting injury. S.H.A. 745 ILCS 10/3–105(a).—*Kiel v. City of Girard*, 211 Ill.Dec. 291, 654 N.E.2d 1101, 274 Ill. App.3d 821, rehearing denied, appeal denied 214

Ill.Dec. 322, 660 N.E.2d 1271, 164 Ill.2d 565.—Mun Corp 772; Neglig 1135.

Ill.App. 5 Dist. 2001. Under the “natural-accumulation rule,” a landowner does not have a duty to remove natural accumulations of snow and ice.—*Manuel v. Red Hill Community Unit School Dist.* No. 10 Bd. of Educ., 257 Ill.Dec. 790, 754 N.E.2d 448, 324 Ill.App.3d 279, appeal denied 261 Ill.Dec. 522, 763 N.E.2d 771, 197 Ill.2d 564.—Neglig 1133.

Ill.App. 5 Dist. 1999. “Natural-accumulation rule” provides that a landowner does not have a duty to a business invitee to remove natural accumulations of snow and ice.—*Kellermann v. Car City Chevrolet-Nissan, Inc.*, 239 Ill.Dec. 435, 713 N.E.2d 1285, 306 Ill.App.3d 285, rehearing denied, appeal denied 243 Ill.Dec. 562, 723 N.E.2d 1163, 186 Ill.2d 569.—Neglig 1076.

Ill.App. 5 Dist. 1996. Under “natural accumulation rule,” landowner in Illinois is generally not liable for injuries when slip-and-fall occurred on surface where snow and ice accumulation was natural and unaggravated by landowner; however, owner may be liable if ice accumulated because owner either aggravated natural condition or engaged in conduct that created new, unnatural, or artificial condition.—*Whittaker v. Honegger*, 221 Ill.Dec. 169, 674 N.E.2d 1274, 284 Ill.App.3d 739.—Neglig 1133, 1134.

Wyo. 1999. The “natural accumulation rule” provides that an owner or occupier of premises is not liable for injuries resulting from a slip and fall on a natural accumulation of ice and snow.—*Selby v. Conquistador Apartments, Ltd.*, 990 P.2d 491.—Neglig 1133.

NATURAL ACCUMULATIONS RULE

Ill.App. 5 Dist. 1991. In general under the “natural accumulations rule,” property owner is under no obligation to remove and is not liable for injuries caused by natural accumulations of snow and ice.—*Endsley v. Harrisburg Medical Center*, 154 Ill.Dec. 470, 568 N.E.2d 470, 209 Ill.App.3d 908.—Neglig 1133.

NATURAL AFFECTION

Ga.App. 1907. “Natural affection” is such as naturally exists between near relatives, as a father and child, brother and sister, husband and wife, and it is regarded in law as a good consideration. The word “father” is interchangeable with “mother” in so far as relationship is concerned, and the presumable natural affection of a child for the mother is a good consideration to support a contract.—*Worth v. Daniel*, 57 S.E. 898, 1 Ga.App. 15.

Tex.Com.App. 1922. A deed granting to grantor's daughter and her children, “all now of Leon county in the state of Texas,” in consideration of \$10 cash and “the natural affection which I bear my said daughter and children,” certain property, for the daughter's sole use and benefit for her life, “and at her death to the issue of her body forever,” conveyed a fixed interest vesting in the children living at the date of its execution, to take effect in

possession on the termination of the life estate, and the interests of children dying before the death of the life tenant did not lapse in favor of surviving children, but descended to the deceased children's heirs; for a limitation to those children in existence at the date of the instrument was implied from the expression of “natural affection” and from the use of the word “now,” which denotes present time and signifies separation or setting apart of an indicated date from that of any past or future date as a point of reference.—*Gibbs v. Barkley*, 242 S.W. 462.—*Deeds* 133(2).

NATURAL AND APPROPRIATE

C.A.3 (Pa.) 1993. Civil penalties against United States are “natural and appropriate” incident of suit and are thus permitted, despite sovereign immunity claim, when applicable law so provides.—*Com. of Pa., Dept. of Environmental Resources v. U.S. Postal Service*, 13 F.3d 62.—U S 125(9).

NATURAL AND CONTINUOUS SEQUENCE

Tex.Civ.App.—Texarkana 1929. In action by boilermaker's helper against his employer, for injuries sustained while lifting a jack without assistance, an instruction defining proximate cause as “the cause which, in a natural and continuous sequence, unbroken by any new cause, produces an event that without which the event would not have happened,” held erroneous, where pleadings and evidence raise an issue as to proximate cause, since such definition omits requirement of probability, inasmuch as words “natural and continuous sequence” are not equivalent to “natural and probable.”—*St. Louis, S.F. & T. Ry. Co. v. Mullins*, 23 S.W.2d 489.

NATURAL AND DIRECT

N.M. 1963. The words “natural and direct” in statute providing that workmen's compensation claims shall be allowed only when disability is natural and direct result of accident signify an understandable and reasonable proximity of cause and effect as distinguished from remote and doubtful consequences resulting from a given occurrence; it is not necessary that exact words of statute be used by witness. 1953 Comp. § 59–10–13.3.—*Stuckey v. Furr Food Cafeteria*, 380 P.2d 172, 72 N.M. 15.—*Work Comp* 597.

NATURAL AND DIRECT RESULT

N.M.App. 1991. “Natural and direct result” within statute providing that claims for workers' compensation shall be allowed only when disability is natural and direct result of accident means result that occurs in the natural course of life without intervening events. NMSA 1978, § 52–1–28.—*Aragon v. State Corrections Dept.*, 824 P.2d 316, 113 N.M. 176, certiorari quashed 821 P.2d 1060, 113 N.M. 23.—*Work Comp* 511.

NATURAL AND ORDINARY CONDITION OF RIVER

U.S.Va. 1940. Navigability for purposes of federal control does not depend solely upon “natural and ordinary condition of river”, which refers to

volume of water, the gradients and the regularity of the flow, but availability for navigation must also be considered in determining whether river is "navigable", and the feasibility of interstate use after reasonable improvements, regardless of whether the improvements are actually completed or even authorized, may properly be considered. U.S.C.A. Const. art. 1, § 8, cl. 3.—U.S. v. Appalachian Elec. Power Co., 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Commerce 82.35.

C.C.A.5 1946. Navigability for purposes of federal control does not depend solely upon "natural and ordinary condition of river", which refers to volume of water, the gradients and the regularity of the flow, but availability for navigation must also be considered in determining whether river is "navigable". Federal Power Act § 3(8), 16 U.S.C.A. § 796(8).—Georgia Power Co. v. Federal Power Commission, 152 F.2d 908.—Commerce 82.35.

NATURAL AND ORDINARY CONDITIONS

C.A.9 (Cal.) 1950. Navigability for purposes of federal control does not depend solely upon "natural and ordinary conditions" of waterway, which refers to volume of water, the gradients and the regularity of the flow, but availability for navigation must also be considered in determining whether waterway is navigable. U.S.C.A. Const. art. 1, § 8, cl. 3.—Davis v. U.S., 185 F.2d 938, certiorari denied 71 S.Ct. 495, 340 U.S. 932, 95 L.Ed. 673.—Commerce 82.35.

NATURAL AND PROBABLE

Cal.App. 3 Dist. 1993. For criminal act to be "reasonably foreseeable" or a "natural and probable" consequence of another criminal design, for purposes of aiding and abetting liability, it is not necessary that collateral act be specifically planned or agreed upon, nor even that it be substantially certain to result from commission of the planned act.—People v. Nguyen, 26 Cal.Rptr.2d 323, 21 Cal.App.4th 518, review denied.—Crim Law 59(5).

Ill.App. 1 Dist. 1984. Defendant is legally responsible for all "natural and probable" results of his actions, i.e., for all consequences which ordinary prudent person ought to have foreseen as likely to occur.—Scott & Fetzer Co. v. Montgomery Ward & Co., Inc., 85 Ill.Dec. 53, 473 N.E.2d 421, 129 Ill. App.3d 1011, appeal allowed, affirmed 98 Ill.Dec. 1, 493 N.E.2d 1022, 112 Ill.2d 378.—Neglig 386.

Ill.App. 2 Dist. 1987. Defendant is legally responsible for all "natural and probable" results of his actions, i.e., for all consequences which ordinary prudent person ought to have foreseen as likely to occur.—Lindenmier v. City of Rockford, 108 Ill. Dec. 624, 508 N.E.2d 1201, 156 Ill.App.3d 76.—Neglig 386, 387.

Tex.Civ.App.—Texarkana 1929. Instruction defining proximate cause held erroneous, where omitting requirement that it be "natural and probable."—St. Louis, S.F. & T. Ry. Co. v. Mullins, 23 S.W.2d 489.—Emp Liab 267.

Tex.Civ.App.—Texarkana 1929. In action by boilermaker's helper against his employer, for injuries sustained while lifting a jack without assistance, an instruction defining proximate cause as "the cause which, in a natural and continuous sequence, unbroken by any new cause, produces an event that without which the event would not have happened," held erroneous, where pleadings and evidence raise an issue as to proximate cause, since such definition omits requirement of probability, inasmuch as words "natural and continuous sequence" are not equivalent to "natural and probable."—St. Louis, S.F. & T. Ry. Co. v. Mullins, 23 S.W.2d 489.

NATURAL AND PROBABLE CONSEQUENCE

Cal.App. 3 Dist. 1995. "Natural and probable consequence" is foreseeable consequence.—People v. Fabris, 37 Cal.Rptr.2d 667, 31 Cal.App.4th 685, rehearing denied, and review denied.—Crim Law 20.

Cal.App. 4 Dist. 1986. Finding that victim's death was "natural and probable consequence" of conspiracy to extract information was sufficiently supported by evidence, so that defendant was liable for murder as member of conspiracy, where defendant had solicited coconspirators' assistance in extracting information from victim and other parties, told coconspirators that he wanted information "at any cost," and knew that coconspirators were carrying deadly weapons when they left to confront victim, though victim's death was unproductive means of unearthing this information.—People v. Luparello, 231 Cal.Rptr. 832, 187 Cal.App.3d 410, review denied.—Consp 40.1.

Fla.App. 3 Dist. 1992. Fact that house burned down and that sixteen-year-old child died in fire was not "natural and probable consequence" of storing gasoline in utility room, so as to render homeowner liable and negligent.—Grayson v. Harris, 608 So.2d 896.—Neglig 1225.

Mass. 1942. The perpetration of crime is not "natural and probable consequence" of furnishing intoxicating liquor to criminal, so as to permit person injured on account of criminal act of intoxicated person to impose civil liability on person furnishing intoxicating liquor.—Barboza v. Decas, 40 N.E.2d 10, 311 Mass. 10.—Int Liq 291.

NATURAL AND PROBABLE CONSEQUENCE DOCTRINE

Nev. 1998. "Natural and probable consequence doctrine" is a product of the common law and is based on the rationale that aiders and abettors are criminally responsible for all harms that are a natural, probable, and foreseeable result of their actions.—Mitchell v. State, 971 P.2d 813, 114 Nev. 1417.—Crim Law 59(5).

NATURAL AND PROBABLE CONSEQUENCE IN THE ORDINARY COURSE OF THINGS

Tenn. 1997. For purposes of rule that defendant who aids and abets codefendant in commission of criminal act is liable for any crime committed by codefendant as natural and probable consequence

of crime originally aided and abetted, "natural and probable consequence in the ordinary course of things" presupposes outcome within reasonably predictable range. West's Tenn.Code, §§ 39-11-302(a), 39-11-402(2).—State v. Carson, 950 S.W.2d 951.—Crim Law 59(5).

NATURAL AND PROBABLE CONSEQUENCES

C.A.7 (Ill.) 1983. Within Illinois definition of proximate cause, "natural and probable consequences" included any intervening cause which first wrongdoer might have reasonably anticipated as natural and probable result of the first wrongdoer's own negligence.—Hylin v. U.S., 715 F.2d 1206, certiorari granted, vacated 105 S.Ct. 65, 469 U.S. 807, 83 L.Ed.2d 16, on remand 755 F.2d 551.—Neglig 431.

E.D.Va. 1999. For purposes of determining whether the defendant's negligence is the proximate cause of the plaintiff's injury under Virginia law, the "natural and probable consequences" of defendant's negligence are those which human foresight can foresee, because they happen so frequently that they may be expected to happen again.—Russo v. U.S., 37 F.Supp.2d 450.—Neglig 386.

Fla. 1949. "Natural and probable consequences" of negligent act are those which a person by prudent human foresight can be expected to anticipate as likely to result from such act because they happen so frequently that in field of human experience they may be expected to happen again, and "possible consequences" of such act are those which happen so infrequently that they are not expected as likely to happen again from the commission of the same act.—Cone v. Inter County Tel. & Tel. Co., 40 So.2d 148.—Neglig 386, 387.

Fla.App. 1 Dist. 1960. "Natural and probable consequences" are those consequences that a person by prudent human foresight can anticipate as likely to result from an act, because they happen so frequently from the commission of such an act that in the field of human experience they may be expected to happen again.—Pope v. Pinkerton-Hays Lumber Co., 120 So.2d 227, certiorari denied 127 So.2d 441.—Neglig 386, 387.

Fla.App. 2 Dist. 1963. "Natural and probable consequences" of negligent act are those which person by prudent human foresight can be expected to anticipate as likely to result from such act because they happen so frequently that in field of human experience they may be expected to happen again, and "possible consequences" of such act are those which happen so infrequently that they are not expected as likely to happen again from commission of same act.—General Tel. Co. of Fla. v. Mahr, 153 So.2d 13, certiorari dismissed 163 So.2d 285.—Neglig 386, 387.

Ga.App. 2002. For purpose of determining proximate cause, "natural and probable consequences" are those which human foresight can foresee because they happen so frequently that they may be expected to happen again, and "possible consequences" are those which happen so infrequently that they are not expected to happen

again.—Thomas v. Food Lion, LLC, 570 S.E.2d 18, 256 Ga.App. 880, reconsideration denied, and certiorari denied.—Neglig 386.

Ga.App. 1997. For purposes of determining proximate cause, "natural and probable consequences" are those that human foresight can foresee, because they happen so frequently that they may be expected to happen again, and "possible consequences" are those that happen so infrequently that they are not expected to happen again.—Morris v. Baxter, 483 S.E.2d 650, 225 Ga.App. 186.—Neglig 386, 387.

Ga.App. 1948. Under "natural and probable consequences" theory of causation, in order to hold defendant liable, petition must show either that act complained of was sole occasion of injury or that it put in operation other causal forces, such as were direct, natural and probable consequences of the original act, or that intervening agency could have reasonably been anticipated by original wrongdoer.—Williams v. Southern Ry. Co., 46 S.E.2d 593, 76 Ga.App. 559.—Neglig 1526.

Ga.App. 1942. A wrongdoer is not responsible for a consequence which is merely possible but only for a consequence which is probable, and the "natural and probable consequences" are those which human foresight can foresee because they happen so frequently that they may be expected to happen again, and the "possible consequences" are those which happen so infrequently that they are not expected to happen again.—Stallings v. Georgia Power Co., 20 S.E.2d 776, 67 Ga.App. 435.—Neglig 386, 387.

Ga.App. 1942. The "natural and probable consequences" of an act in the law of negligence are those which human foresight can foresee, because they happen so frequently that they may be expected to happen again. The "possible consequences" are those which happen so infrequently that they are not expected to happen again.—Seymour v. City of Elberton, 20 S.E.2d 767, 67 Ga.App. 426.

Ill.App. 1 Dist. 1950. "Natural and probable consequences" are those which human foresight can anticipate.—Chapman v. Baltimore & O. R. Co., 92 N.E.2d 466, 340 Ill.App. 475.—Neglig 386, 387.

Kan. 1961. "Natural and probable consequences" of a negligent act are those which human foresight can anticipate because they happen so frequently they may be expected to recur.—State Farm Mut. Auto. Ins. Co. v. Cromwell, 358 P.2d 761, 187 Kan. 573.—Neglig 386.

NATURAL AND PROBABLE CONSEQUENCES DOCTRINE

Cal.App. 4 Dist. 2000. Under the "natural and probable consequences doctrine," the aider and abettor in a proper case is not only guilty of the particular crime that to his knowledge his confederates are contemplating committing, but is also liable for the natural and reasonable consequences of any act that he knowingly aided or encouraged.—People v. Culuko, 92 Cal.Rptr.2d 789, 78 Cal.App.4th 307, review denied.—Crim Law 59(5).

NATURAL AND PROBABLE CONSEQUENCES TEST

D.Kan. 2001. Under Kansas law's "natural and probable consequences test," automobile insurance policy exclusion for "any damages arising from an intentional act" encompasses only those injuries which are natural and probable consequences of the insured's intentional act. K.S.A. 40-3107(i)(6).—*Guaranty Nat. Ins. Co. v. McGuire*, 173 F.Supp.2d 1107.—Insurance 2675.

NATURAL AND PROBABLE RESULT

Kan.App. 1991. Injury is "natural and probable result" of accident, for workers compensation purposes, where claimant's disability gradually increased as result of primary accidental injury, but not when increased disability resulted from new and separate accident.—*Wiethorn v. Safeway Stores, Inc.*, 820 P.2d 719, 16 Kan.App.2d 188, review denied.—Work Comp 511.

Ky. 1923. An instruction to find for plaintiff if he received injuries complained of as a "natural and probable result" of defendant's furnishing a vicious mule held not erroneous by reason of the use of the words "natural and probable result," instead of "proximate cause," being a proper definition thereof.—*Nelson Creek Coal Co. v. Bransford*, 258 S.W. 289, 201 Ky. 778.—Emp Liab 267.

Pa.Super. 1960. The phrase "natural and probable result" as used in compensation cases has a meaning different from that which it bears when used as a test of foreseeability in a negligence case.—*Jessie v. Dash*, 165 A.2d 280, 194 Pa.Super. 1.—Work Comp 597.

Pa.Super. 1957. The phrase "natural and probable result" as used in compensation cases, has a meaning different from that which it bears when used as a test of foreseeability in a negligence case.—*Gower v. Mackes*, 132 A.2d 880, 184 Pa.Super. 41.—Work Comp 597.

Tex.Com.App. 1921. Foreseeableness or anticipation of injury is a necessary element of proximate cause; and while actual anticipation is not the test, nor is it material whether the particular injury might have been foreseen, it is requisite that the injury be of such a general character as might reasonably have been anticipated and that the injured party should be so situated with relation to the wrongful act that injury to him or to one similarly situated might reasonably have been foreseen; the phrase "natural and probable result" meaning what should reasonably be anticipated in the light of common experience applied to the surrounding circumstances.—*San Antonio & A.P. Ry. Co. v. Behne*, 231 S.W. 354.—Neglig 387.

Tex.Civ.App.—Dallas 1929. Term "natural and probable result" in instruction held to mean such result that happening is of such moment that ordinarily prudent person would have foreseen it.—*Texas Power & Light Co. v. Culwell*, 19 S.W.2d 816, writ granted, reversed 34 S.W.2d 820, modified 37 S.W.2d 123.—Electricity 19(13).

Tex.Civ.App.—Beaumont 1939. The expression "natural and probable result" has been used and interpreted to mean what should reasonably be anticipated in the light of common experience applied to the surrounding circumstances. Since every event is the result of a natural law, we apprehend the meaning is that the injury should be such as may probably happen as a consequence of the negligence, under the ordinary operation of natural laws.—*Foster v. Woodward*, 134 S.W.2d 417, writ refused.

NATURAL AND PROPER RESULT

Vt. 1938. In action for death of minor when struck by automobile which had skidded on ice allegedly formed as result of village's negligence in permitting a water pipe beneath the street to leak, where driver could have averted accident notwithstanding his own negligence had it not been for the ice, village could not avoid liability on ground that driver's negligence constituted an efficient "intervening cause," but was liable on ground that the intervening act of the driver in losing control of his automobile on the ice was a "natural and proper result" of its failure to prevent water from escaping and forming ice on the pavement.—*Wagner v. Village of Waterbury*, 196 A. 745, 109 Vt. 368.—Autos 282.

NATURAL AND PROXIMATE CONSEQUENCE

N.Y.Mun.Ct. 1939. An injury to a person's feelings, independently, and alone, apart from corporal or personal injury, is not in any juridical sense a "natural and proximate consequence" of the negligent act for which damages may be awarded.—*Furlan v. Rayan Photo Works*, 12 N.Y.S.2d 921, 171 Misc. 839.

NATURAL AND PROXIMATE RESULT

Wis. 1965. Where some of attorney's fees incurred by insured resulted from effort to resist garnishment actions in pursuance of effort to collect judgment in excess of automobile liability policy limits, in connection with creation of a trust in favor of insured's mother and in relation to advice concerning wisdom of insured's going into bankruptcy, such fees could not be included as damages against insurer since such fees could not be fairly denominated a "natural and proximate result" of insurer's wrongful conduct. W.S.A. 271.04.—*Baker v. Northwestern Nat. Cas. Co.*, 132 N.W.2d 493, 26 Wis.2d 306.—Insurance 3375.

NATURAL AND UNALIENABLE RIGHTS

N.J.Ch. 1945. The right of privacy is one of the "natural and unalienable rights" recognized by the Constitution, and no authority has the power to change or abolish it. N.J.S.A.Const. art. 1, par. 1.—*McGovern v. Van Riper*, 43 A.2d 514, 137 N.J.Eq. 24, affirmed in part 45 A.2d 842, 137 N.J.Eq. 548.—Const Law 82(7).

NATURAL AND UNCOMPOUNDED

Cust.Ct. 1967. "Natural and uncompounded" for purpose of determining whether a product is

properly classifiable under Tariff Act as a drug advanced in value or condition means that the drug must exist as such in the source material and cannot be synthesized. Tariff Act of 1930, § 1, par. 34, 46 Stat. 596.—*Organon, Inc. v. U. S.*, 275 F.Supp. 149.—Cust Dut 24(2).

NATURAL BEAUTY

Ill. 1975. Presence in disputed area of sufficient objects of natural creation, i. e., Mississippi river, confluence of two rivers and bluffs with outcropping of rock, justified designation of area as one of "natural beauty" within meaning of statute allowing Department of Transportation to exercise power of eminent domain to preserve certain areas of natural beauty, despite presence of a few man-made scars. S.H.A. ch. 121, § 4-201.15; 23 U.S.C.A. § 319.—*Department of Public Works and Bldgs. v. Keller*, 335 N.E.2d 443, 61 Ill.2d 320.—Em Dom 17.

NATURAL BODIES OF WATER DOCTRINE

Wash. 1996. Landowner is not excused from duty to exercise reasonable care to protect invitees from potentially dangerous conditions on land solely because potential danger includes risks that are inherent in natural body of water; while "natural bodies of water doctrine" has been applied in attractive nuisance cases, it does not apply where injured party is invitee rather than trespassing child.—*Degel v. Majestic Mobile Manor, Inc.*, 914 P.2d 728, 129 Wash.2d 43.—Neglig 1037(4), 1130.

NATURAL-BORN CHILDREN

Pa. 1940. Where testator, who died in 1912, had by his will, written in 1906, created a trust fund, the income thereof to be paid to his daughter for life with power of appointment to her children or descendants of children, and such daughter died childless, an appointment by daughter to an adopted son, adopted in 1930, was not a valid exercise of the appointing power, in absence of anything in the will showing that testator intended the word "children" to be extended beyond its usual import of "natural-born children." 20 P.S. §§ 181 et seq., 228.—*In re Corr's Estate*, 12 A.2d 76, 338 Pa. 337.—Wills 692(4).

NATURAL BORN CITIZEN

D.D.C. 1936. Child born in England of mother who had been born in United States, and had married Englishman in England, held not a "natural born citizen," within provisions of Federal Constitution, whether child became citizen at birth by reason of mother's citizenship or by her subsequent repatriation. Cable Act, 8 U.S.C.A. §§ 9, 10, 367-370; 8 U.S.C.A. §§ 6 and note, 7, 8, 399c(a); Rev.St. § 1993; U.S.C.A.Const. art. 2, § 1, cl. 4; Amend. 14; Convention with Great Britain, May 13, 1870, art. 1, 16 Stat. 775.—U.S. ex rel. Guest v. Perkins, 17 F.Supp. 177.—Citiz 9.

NATURAL BOUNDARIES

Cal. 1887. "Natural boundaries," as used in Pol. Code, § 3461, which requires certain assessment lists to contain a description by local subdivisions,

swamp-land surveys, or natural boundaries, is not construed to exclude all artificial boundaries or boundaries made by man. Any description which clearly identifies and marks out the land is sufficient.—*Swamp-Land Reclamation Dist. No. 407 v. Wilcox*, 14 P. 843, 2 Cal.Unrep. 794, reversed 17 P. 241, 75 Cal. 443.

NATURAL BOUNDARY

N.C. 1955. The line of an adjacent tract, if well known and established, is a "natural boundary".—*Wachovia Bank & Trust Co. v. Miller*, 89 S.E.2d 765, 243 N.C. 1.—Bound 11.

N.C. 1940. The call for another's line in a deed is considered a "natural boundary" and, when known at the time of the execution of the deed, will control a call for course and distance.—*Clegg v. Canady*, 8 S.E.2d 246, 217 N.C. 433.—Bound 3(7).

N.C. 1910. A well known and established line of an adjacent tract is a "natural boundary" within the rule that courses and distances give way to a natural boundary, because the line is more certain than course and distance.—*Wilson Lumber Co. v. Hutton*, 68 S.E. 2, 152 N.C. 537.—Bound 3(3).

N.C. 1908. The line of another tract of land is a "natural boundary" if, at the time a deed calling for it is made, the line is indicated by visible marks, so that it can be identified and located, or if it can be otherwise located with reasonable certainty.—*Lance v. Rumbough*, 63 S.E. 357, 150 N.C. 19.—Bound 11.

NATURAL BROTHER

C.C.A.5 (Tex.) 1933. Illegitimate child tracing kinship to illegitimate deceased soldier by proof that both had same mother held "natural brother" of deceased soldier under Louisiana law, notwithstanding absence of formal acknowledgment, where fathers were unknown; therefore proceeds of war risk policy did not escheat, but passed to deceased's brother. 38 U.S.C.A. § 514; Civ. Code La. arts. 202, 203, 212, 485, 920, 923, 952.—*Fennell v. U.S.*, 67 F.2d 768.—Armed S 77(12).

Cal.App. 4 Dist. 1992. Intestate decedent's half-brother was her "natural brother" under provision of Probate Code prohibiting inheritance by or through parent of child born out of wedlock if parent does not acknowledge or support child, except for "natural" brothers and sisters. West's Ann.Cal.Prob.Code § 6408(d).—*Estate of Corcoran*, 9 Cal.Rptr.2d 475, 7 Cal.App.4th 1099, rehearing denied, modified, and review denied.—Child 85, 86.

NATURAL BROTHER OR SISTER

La. 1953. A child born in lawful wedlock to the mother of an illegitimate child is his "legitimate brother or sister" and not his "natural brother or sister" within meaning of statute providing that natural brothers and sisters shall inherit estate of a natural child whose father and mother have predeceased him. LSA-C.C. arts. 238, 922, 923.—*Succession of Wesley*, 69 So.2d 8, 224 La. 182.—Child 89.

NATURAL BROTHERS

La.App. 1 Cir. 1947. Where mother of illegitimate daughter, both before and after her marriage to one not the daughter's father, acknowledged daughter as her child and reared her in same home with her sons by such marriage, daughter was her "natural child" and sons by the subsequent marriage were daughter's "natural brothers" entitled to inherit from daughter. Rev.Civ.Code, arts. 203, 212, 923.—Standard Oil Co. of N.J. v. Perkins, 29 So.2d 502.—Child 90.

NATURAL BROTHERS AND SISTERS

La. 1953. Civil Code provision that "natural brothers and sisters" shall inherit estate of deceased illegitimate child, if predeceased by father and mother, uses quoted phrase as meaning other illegitimate children of same parent, and this in effect, excludes brothers and sisters, of legitimate birth from inheriting property of deceased illegitimate child of same parent. LSA-C.C. arts. 238, 922, 923.—Succession of Wesley, 69 So.2d 8, 224 La. 182.—Child 89.

NATURAL BUTTER AND CHEESE

Ohio 1900. For the purposes of the chapter relating to adulteration, the terms "natural butter and cheese," "natural butter or cheese, produced from pure, unadulterated milk or cream from the same," "butter and cheese made from unadulterated milk or cream," "butter or cheese, the product of the dairy," and "butter or cheese," shall be understood to mean the products usually known by the terms "butter and cheese," and which butter is manufactured exclusively from pure milk or cream, or both, with salt and rennet, and with or without any harmless coloring matter, and which cheese is manufactured exclusively from pure milk or cream, or both, with salt and rennet, and with or without any harmless coloring matter or sage. Bates' Ann. St.Ohio 1904, § 4200-14;—State ex rel. Monnett v. Capital City Dairy Co., 57 N.E. 62, 62 Ohio St. 350, 43 W.L.B. 353, 57 L.R.A. 181, affirmed Capital City Dairy Co. v. State of Ohio, 22 S.Ct. 120, 14 Ohio F.Dec. 12, 183 U.S. 238, 46 L.Ed. 171.

NATURAL CAUSE

Neb. 1942. Negligence is the "natural cause" of injury, so as to render the negligent person liable, when either the negligence acts directly in producing the injury or sets in motion other causes so producing it and forming a continuous chain in natural sequence down to the injury, thus linking the negligence with the injury by a chain of natural and consequential causation, although the former may be neither the immediate nor the direct cause of the event.—McClelland v. Interstate Transit Lines, 6 N.W.2d 384, 142 Neb. 439.—Neglig 384, 386.

NATURAL CEMENT

Tex.Civ.App.—Beaumont 1940. "Natural cement" is the quick-setting product of a low temperature kiln burning a cement rock of irregular com-

position.—Trinity Portland Cement Co. v. State, 144 S.W.2d 329, writ refused.

NATURAL CHANNEL

Ariz. 1926. Appropriator is entitled to have water flow down "natural channel" to point of diversion undiminished, or, if diverted by other appropriators, to have it delivered to him at their expense. An appropriator of water from a running stream is entitled to have it flow down the "natural channel" to his point of diversion undiminished in quantity or quality, or, if diverted from natural channel by other appropriators for their convenience, to have it delivered to him at available points by other means provided by subsequent appropriators at their expense; "natural channel" being floor or bed on which water flows and banks on each side thereof as carved out by natural causes.—Pima Farms Co. v. Proctor, 245 P. 369, 30 Ariz. 96.—Waters 140.

Ariz. 1926. Appropriator is entitled to have water flow down "natural channel" to point of diversion undiminished, or, if diverted by other appropriators, to have it delivered to him at their expense.—Pima Farms Co. v. Proctor, 245 P. 369, 30 Ariz. 96.—Waters 140.

Cal. 1900. The term "natural channel" includes all channels through which, in the existing condition of the country, the water, whether a living stream or surface water, naturally flows; and where, by reason of the grading of the lots and streets, the waters flowing to a channel are different from what before the improvement of the city naturally flowed to the same point, and the channel itself is thereby changed, it is the duty of the city to protect the property of its citizens from the waters flowing through such new channel, through which, under natural laws, the surface waters are discharged, and which channel must then be regarded as a natural channel.—Larrabee v. Town of Cloverdale, 63 P. 143, 131 Cal. 96.

Cal.App. 2 Dist. 1941. As respects liability of municipal corporations for escape of surface water as a consequence of the grading and improvement of streets, the term "natural channel" may be construed as including all channels through which, in existing condition of country, water naturally flows.—Mitchell v. City of Santa Barbara, 120 P.2d 131, 48 Cal.App.2d 568.—Mun Corp 835.

Cal.App. 3 Dist. 1950. Where slough was originally a branch of a creek and flow from creek was later cut off but slough still had well defined channel and distinct banks and water produced by rainfall on adjoining lands flowed into slough and slough also carried foreign water abandoned by irrigation district, the cutting off of the waters from creek did not destroy the character of the channel as a "natural channel" or "water course", hence foreign waters abandoned by irrigation district were subject to appropriation under statute. Water Code, §§ 1200, 1201.—Haun v. De Vours, 218 P.2d 996, 97 Cal.App.2d 841.—Waters 38, 151.

NATURAL CHILD

C.C.A.5 (La.) 1941. A "natural child," within statute providing that if father and mother of natural child die before the child the estate of the natural child passes to his natural brothers and sisters or to their descendants, includes an illegitimate child of a father and mother as to whose marriage there was no impediment and who has been acknowledged by them, and adulterous bastards are not included within provisions of the statute and do not inherit directly from one another or through their mother, regardless of whether she has attempted to acknowledge them. Civ.Code, La. arts. 182, 923.—*Lathan v. Edwards*, 121 F.2d 183.—Child 12, 85, 87.

C.C.A.5 (La.) 1941. The terms "illegitimate child," "natural child," and "bastard" are in common parlance interchangeable terms connoting a child born out of wedlock.—*Lathan v. Edwards*, 121 F.2d 183.—Child 1.

D.Ariz. 2002. Whether insured's children who were conceived by in vitro fertilization of his surviving wife after his death met the definition of "natural child" under the Social Security Act depended upon whether the children could inherit from insured under the intestacy laws of the state where insured had his permanent home when he died. Social Security Act, § 216(e), (h)(2)(A), as amended, 42 U.S.C.A. § 416(e), (h)(2)(A); 20 C.F.R. §§ 404.354, 404.355(a).—*Gillett-Netting v. Barnhart*, 231 F.Supp.2d 961.—Social S 137.

D.Ariz. 2002. Under Arizona intestacy laws, insured's children who were conceived by in vitro fertilization of his surviving wife after his death, even if insured intended for her to bear his children after his death, were neither born nor in gestation at the time of insured's death, and thus, were not in existence at that time, and did not "survive" insured as required to inherit from insured, and therefore, were ineligible for survivor's benefits under the Social Security Act's definition of "natural child." Social Security Act, § 216(e), (h)(2)(A), as amended, 42 U.S.C.A. § 416(e), (h)(2)(A); 20 C.F.R. §§ 404.354, 404.355(a); A.R.S. §§ 14-1102, subd. B, par. 2, 14-1201, subd. 11, 14-2103, 14-2104, subd. A, 14-2108, 14-2114, subds. A, B.—*Gillett-Netting v. Barnhart*, 231 F.Supp.2d 961.—Social S 137.

D.S.D. 1987. For purposes of determining eligibility for social security benefits, a "natural child" is a child who is the biological offspring of the insured. Social Security Act, § 216(h)(3)(C)(i), as amended, 42 U.S.C.A. § 416(h)(3)(C)(i).—*Luke for Luke v. Bowen*, 666 F.Supp. 1340, affirmed 868 F.2d 974, rehearing denied.—Social S 137.

Cal.App. 2 Dist. 1943. The rights which a child acquires by adoption are not limited to those which exist only while both parent and child are living, but the adopted child becomes the "child" or "issue" of the adoptive parent and a "natural child" as respects right to inherit from adoptive parent. Civ. Code, § 230.—*In re Esposito's Estate*, 135 P.2d 167, 57 Cal.App.2d 859.—Adop 21.

La. 1949. If illegitimate child born in 1864 of a negro mother and white father at time when they could not legally marry, was validly acknowledged between time of his birth and 1870 when statute was adopted prohibiting acknowledgement of an illegitimate child by parents who were incapable of intermarriage when the child was conceived, illegitimate child was a "natural child" within meaning of statute, and was legally acknowledged, since statute of 1870 would not be given retroactive effect. Civ. Code, Code, arts. 8, 204, 923; Civ.Code 1825, arts. 95, 222.—*State v. De Lavallade*, 39 So.2d 845, 215 La. 123.—Child 12.

La.App. 1 Cir. 1947. Where mother of illegitimate daughter, both before and after her marriage to one not the daughter's father, acknowledged daughter as her child and reared her in same home with her sons by such marriage, daughter was her "natural child" and sons by the subsequent marriage were daughter's "natural brothers" entitled to inherit from daughter. Rev.Civ.Code, arts. 203, 212, 923.—*Standard Oil Co. of N.J. v. Perkins*, 29 So.2d 502.—Child 90.

Mont. 1958. Under statute governing relationship of adopted child and adopted parents, child does not obtain status of "natural child" as to relatives of adoptive parents. R.C.M.1947, §§ 61-134, 91-201 to 91-203, 91-211, 91-218, 91-219.—*In re Miller's Trust*, 323 P.2d 885, 133 Mont. 354.—Adop 18.

N.Y. 1940. A "natural child" or a "child born out of wedlock" or a "bastard", as defined by statute relating to proceeding to establish paternity, is in effect a child born out of lawful matrimony or born to a married woman under conditions where the presumption of legitimacy is not conclusive and has been rebutted. Domestic Relations Law, § 119; Inferior Criminal Courts Act, §§ 60, 61.—*Commissioner of Public Welfare of City of New York, on Complaint of Vincent v. Koehler*, 30 N.E.2d 587, 284 N.Y. 260.—Child 1.

N.Y. 1940. In statute defining a "natural child" as a child begotten and born while the husband of its mother was separate from her for a whole year previous to its birth, the reference to a child born while the husband of its mother was "separate" for a whole year means while the husband and wife were living apart under conditions where there is no fair basis for the belief that at times they may have come together. Inferior Criminal Courts Act § 61.—*Commissioner of Public Welfare of City of New York, on Complaint of Vincent v. Koehler*, 30 N.E.2d 587, 284 N.Y. 260.—Child 1.

N.Y. 1940. In paternity proceeding instituted under Inferior Criminal Courts Act, court, properly finding that the child was born while the husband of its mother was separate from the mother for a whole year previous to its birth, and that the husband and mother were living apart under conditions where there was no fair basis for belief that at times they had come together, had jurisdiction to make order determining parentage of child and providing for its support, as against contention that evidence did not establish that the child was a "natural

child". Inferior Criminal Courts Act, §§ 60, 61, 64.—Commissioner of Public Welfare of City of New York, on Complaint of Vincent v. Koehler, 30 N.E.2d 587, 284 N.Y. 260.—Child 36.

N.D. 1945. In common parlance "illegitimate child", "natural child", and "bastard" are interchangeable terms connoting a child "born out of wedlock". R.C.1943, 32-3601.—State v. Coliton, 17 N.W.2d 546, 73 N.D. 582, 156 A.L.R. 1403.—Child 1.

NATURAL CHILDREN

C.C.A.5 (La.) 1941. Under Louisiana law, when there is no impediment to a marriage between parents of illegitimate children, such children who have been acknowledged by their father or mother, or both, are denominated "natural children," and except that they do not exclude certain other heirs, they may inherit from their father or mother and they may be legitimated by the subsequent marriage of their parents, and have the same rights as children born during the marriage.—Lathan v. Edwards, 121 F.2d 183.—Child 11, 12, 86, 87.

C.C.A.5 (La.) 1941. War veteran and his sister, who were adulterous bastards as to their father but whose mother informally acknowledged them as her children, were not "natural children" within Louisiana statute providing that if father and mother of a natural child die before the child, the child's estate shall pass to his natural brothers and sisters, and hence the sister could not inherit directly from the veteran and could not maintain an action to set aside judgment alleged to have been fraudulently obtained, awarding proceeds of veteran's war risk policy to veteran's aunts and uncles, and to recover proceeds of the policy. Civ.Code La. arts. 182, 198, 199, 202-204, 918-920, 923.—Lathan v. Edwards, 121 F.2d 183.—Armed S 79(1); Child 85.

La. 1920. Although under the French law all children born out of wedlock who are capable of acknowledgment are called "natural children" at their birth, with us only those who have been acknowledged are recognized as natural children, all others being designated bastards, and the judicial inquiry into paternity or maternity is to enable the illegitimate child to demand alimony. Civ.Code, art. 242.—Minor v. Young, 89 So. 757, 149 La. 583.

La. 1913. Illegitimate children are those born out of wedlock; and, unless they have been acknowledged by their parents, they are called "bastards." Those who are so acknowledged by both or either of their parents are called "natural children".—Briggs v. McLaughlin, 63 So. 851, 134 La. 133.—Child 1.

La. 1903. The law denominates as "natural children" those illegitimates who have been acknowledged by their father.—Succession of Vance, 34 So. 767, 110 La. 760.—Child 12.

La.App. 2 Cir. 1930. Brother did not, under Civ. Code, art. 912, inherit from his bastard sister, in view of articles 179, 202, 238, 922, relating to inheritance from illegitimate children, and defining legitimate children and natural children, regardless

of provisions of article 922, relative to inheritance from "natural children," which are illegitimate children acknowledged by parents.—Jones v. James, 125 So. 761, 12 La.App. 224.

NATURAL CLASSIFICATION

Or. 1956. If legislative intent of section of Relatives' Support Act relating to proceedings against kindred of old age assistance recipient was to proceed only against those filing income tax returns, such was "natural classification" which legislature had right to designate as first element in proof of financial responsibility. Laws 1949, c. 590, § 3, ORS 411.430.—Mallatt v. Luhn, 294 P.2d 871, 206 Or. 678.—Const Law 243.3.

NATURAL COLORATION

S.D.Ohio 1928. 'Artificial coloration,' in statute taxing oleomargarine, is opposite of "natural coloration;" 'artificial;' 'coloration' (Act May 9, 1902, Sec. 3, amending Oleomargarine Act 1886, Sec. 8 (26 USCA 546)). 'Artificial coloration,' as used in Act May 9, 1902, Sec. 3, amending Oleomargarine Act Aug. 2, 1886, Sec. 8 (26 USCA 546; Comp.St. 6220), by imposing tax of only one-fourth of cent per pound on oleomargarine free from such coloration, is counterpart and opposite of "natural coloration," which means colored naturally, without using human skill or labor; 'coloration' being a noun, meaning state of being colored, while 'artificial' is qualifying adjective, meaning produced or modified by human skill or labor.—Foley v. Miller, 24 F.2d 722.—Int Rev 16.

S.D.Ohio 1928. "Artificial coloration" in statute taxing oleomargarine, is opposite of "natural coloration;" "artificial;" "coloration". Act May 9, 1902, § 3, amending Oleomargarine Act 1886, § 8, 26 U.S.C.A. Int.Rev.Code, §§ 2301, 2313.—Foley v. Miller, 24 F.2d 722.—Int Rev 4305.

S.D.Ohio 1928. 'Artificial coloration,' in statute taxing oleomargarine, is opposite of "natural coloration;" 'artificial;' 'coloration' (Act May 9, 1902, Sec. 3, amending Oleomargarine Act 1886, Sec. 8 (26 USCA 546)). 'Artificial coloration,' as used in Act May 9, 1902, Sec. 3, amending Oleomargarine Act Aug. 2, 1886, Sec. 8 (26 USCA 546; Comp.St. 6220), by imposing tax of only one-fourth of cent per pound on oleomargarine free from such coloration, is counterpart and opposite of "natural coloration," which means colored naturally, without using human skill or labor; 'coloration' being a noun, meaning state of being colored, while 'artificial' is qualifying adjective, meaning produced or modified by human skill or labor.—Foley v. Miller, 24 F.2d 722.—Int Rev 16.

NATURAL CONDITION

Cal.App. 1 Dist. 1975. Existence on beach at which diver was injured of portable lifeguard towers, restroom facilities, and concrete fire rings did not make the area improved rather than "unimproved public property" for purposes of statute providing that neither a public entity nor a public employee is liable for injury caused by natural condition of any unimproved public property; the

facilities did not change the "natural condition" of the beach. West's Ann.Gov.Code, § 831.2.—*Fuller v. State of California*, 125 Cal.Rptr. 586, 51 Cal.App.3d 926.—States 79, 112.2(2).

Cal.App. 2 Dist. 1995. Wild animals, including mountain lion that mauled child in state park, constituted "natural condition" of unimproved public property, within meaning of provision of California Tort Claims Act providing absolute immunity for public entities against claims for injuries caused by natural conditions of unimproved public property. West's Ann.Cal.Gov.Code § 831.2.—*Arroyo v. State of California*, 40 Cal.Rptr.2d 627, 34 Cal.App.4th 755.—States 112.2(6).

Cal.App. 3 Dist. 1979. Where drowning was caused by a combination of the flow of water in river and snag which consisted of trees washed out of the upstream shoreline by water flow, the drowning was caused by a "natural condition," within meaning of statute providing that public entity is not liable for injury caused by natural condition of unimproved public property, since there was nothing man-made or artificial about the snag or the river or the flow of water, and therefore, county was not liable for damages arising out of the drowning, since county was a public entity and river where drowning occurred was unimproved public property. West's Ann.Gov.Code, § 831.2.—*County of Sacramento v. Superior Court*, 152 Cal.Rptr. 391, 89 Cal.App.3d 215.—Counties 143.

Cal.App. 3 Dist. 1975. Shoreline of a lake is a "natural condition" thereof within statute exempting municipal entities from liability for injury caused by natural condition of a lake. West's Ann.Gov.Code, § 831.2.—*Osgood v. County of Shasta*, 123 Cal.Rptr. 442, 50 Cal.App.3d 586.—Mun Corp 827(1).

Cal.App. 4 Dist. 2000. Erosion of state-owned bluff adjacent to state-owned beach was a "natural condition," thus making state statutorily immune from liability for damages allegedly sustained by owner of residence located on top of bluff as erosion compromised lateral support for residence, even though erosion allegedly resulted from a combination of natural forces and pedestrian traffic. West's Ann.Cal.Gov.Code § 831.25.—*Schooler v. State of California*, 102 Cal.Rptr.2d 343, 85 Cal.App.4th 1004.—States 112.2(3).

Cal.App. 4 Dist. 1990. Sandbar located at city's public beach was a "natural condition" within meaning of governmental immunity statute, despite contention that past human improvements and engineering caused higher and more frequent sandbars; accordingly, swimmer who was rendered a paraplegic when he dove into concealed sandbar could not recover from city. West's Ann.Cal.Gov.Code § 831.2.—*Tessier v. City of Newport Beach*, 268 Cal.Rptr. 233, 219 Cal.App.3d 310, review denied.—Mun Corp 851.

Cal.App. 6 Dist. 1992. Plaintiff injured by shore-breaking wave while bodysurfing was injured by "natural condition," and thus state was immune from liability for the injury even if reconstruction of beach and addition of rock "groin" jetty 17 years

before accident had artificially changed configuration of ocean bottom and thereby caused shore-breaking wave; new beach did not differ in any material respect from older beach it replaced, and shorebreaking waves were natural condition observed and documented elsewhere. West's Ann.Cal.Gov.Code § 831.2.—*Knight v. City of Capitola*, 6 Cal.Rptr.2d 874, 4 Cal.App.4th 918, review denied.—States 112.2(2).

Ind.App. 1997. Planting of vegetation by humans is considered to create "artificial condition," rather than natural one, as "natural condition" is limited to land unchanged by humans; difference is significant, since there are differing duties owed by landowners for natural versus artificial conditions. Restatement (Second) of Torts §§ 363, 840.—*Shelley v. Cross*, 680 N.E.2d 10, transfer denied 690 N.E.2d 1184.—Neglig 1010.

Ind.App. 1996. "Natural condition" of land, from which owner of land adjacent to public thoroughfare owes no duty to protect users of thoroughfare, is defined as land that was not changed by any acts of humans, including owner or any predecessors in interest, and also includes natural growth of vegetation, such as weeds, on land that is not artificially made receptive to them; any vegetation that humans plant is non-natural, regardless of whether they are inherently harmful or become so because of subsequent natural forces. Restatement (Second) of Torts § 363.—*Spears v. Blackwell*, 666 N.E.2d 974, rehearing denied, transfer denied 683 N.E.2d 581.—High 199; Mun Corp 808(1); Neglig 1010.

Ind.App. 1996. "Natural condition" of land, from which owner of land adjacent to public thoroughfare owes no duty to protect users of thoroughfare, is condition that is not in any way result of human activity and includes soil that has not been cultivated, graded, or otherwise disturbed, and vegetation is not considered "natural condition" if it grows on land only because it has been plowed, even if no one planted or cultivated vegetation. Restatement (Second) of Torts § 363.—*Spears v. Blackwell*, 666 N.E.2d 974, rehearing denied, transfer denied 683 N.E.2d 581.—High 199; Mun Corp 808(1); Neglig 1010.

Ind.App. 1996. "Natural condition" of land, from which owner of land adjacent to public thoroughfare owes no duty to protect users of thoroughfare, does not mean that human activity may not have ever affected area, as human activity may be so remote in time, or so minimal in effect, that what may have begun as artificial condition becomes natural condition. Restatement (Second) of Torts § 363.—*Spears v. Blackwell*, 666 N.E.2d 974, rehearing denied, transfer denied 683 N.E.2d 581.—Neglig 1010.

N.J.Sup. 1905. The phrase "natural condition," in an ordinance requiring any person who opens or excavates a highway to restore the same to its "natural condition," is applicable to the erection of electric light poles, as the phrase means only that the street is to be restored to the condition which is natural to the street with the contemplated im-

provements for which the excavation is required. "No street that has been improved at all is, strictly speaking, in a 'natural condition'; it can only be in a condition natural to a street."—Cook v. North Bergen Tp., 59 A. 1035, 72 N.J.L. 119, 43 Vroom 119, affirmed 65 A. 885, 73 N.J.L. 818, 44 Vroom 818.

N.J.Super.L. 1991. Landowners had duty to exercise reasonable care to ensure that shrubbery on their property was not visual obstruction to motorist on roadway; shrubbery was "artificial condition," not "natural condition," as it was planted by landowners or their predecessors in title.—Kolba v. Kuszniar, 599 A.2d 194, 252 N.J.Super. 53.—Autos 269.

NATURAL CONDITION OF LAND

Minn. 1955. "Natural condition of land" in which it is entitled to lateral support means a condition which is in no way the result of human activity, including soil which has not been cultivated, graded or otherwise disturbed.—Olson v. Mullen, 68 N.W.2d 640, 244 Minn. 31.—Adj Land 3.

NATURAL CONDITIONS

Cal.App. 4 Dist. 2000. Generally, conditions that occur in nature but happen to be produced by a combination of human and natural forces are "natural conditions" as a matter of law, for purposes of determining whether a public entity has statutory immunity from liability for damage to adjacent property resulting from a failure of unimproved public property. West's Ann.Cal.Gov.Code § 831.25.—Schooler v. State of California, 102 Cal. Rptr.2d 343, 85 Cal.App.4th 1004.—Mun Corp 847.

NATURAL CONSEQUENCE

D.C. 1995. For purposes of criminal liability as accessory, "natural consequence" is one which is within normal range of outcomes that may be expected to occur if nothing unusual has intervened.—Roy v. U.S., 652 A.2d 1098.—Crim Law 69, 75.

Neb. 1945. The "natural consequence" of means used, within rule that "accidental means" within contracts insuring against injury or death through such means are those which produce effects which are not their natural and probable consequences, is consequence which ordinarily follows from use of means or result which may be reasonably anticipated and should be expected from such use, while "probable consequence" of use of given means is consequence which is more likely to follow from its use than it is to fail to follow therefrom.—Cutrell v. John Hancock Mut. Life Ins. Co., 17 N.W.2d 465, 145 Neb. 550.—Insurance 2590(1).

Or. 1935. A "natural consequence" is one which has followed from the original act complained of, in the usual, ordinary, and experienced course of events—a result, therefore, which might reasonably have been anticipated or expected. Natural consequence, however, does not necessarily include all acts such as, upon a calculation of chances, would be found possible of occurrence, or

such as extreme prudence might anticipate, but only those which ensue from the original act, without any such extraordinary coincidence or conjunction of circumstances as that the usual course of nature should seem to have been departed from.—Aune v. Oregon Trunk Ry., 51 P.2d 663, 151 Or. 622.

Utah 1944. "Accidental means", within provision of life policy for payment of double indemnity for insured's death as direct result of injury effected solely through accidental means, are those which produce effects which are not their natural and probable consequences; the "natural consequence" of means used is consequence which ordinarily follows from such use or result which may be reasonably anticipated therefrom and ought to be expected; while "probable consequence" of use of given means is consequence which is more likely to follow from such use than it is to fail to follow.—Handley v. Mutual Life Ins. Co. of New York, 147 P.2d 319, 106 Utah 184, 152 A.L.R. 1278.—Insurance 2590(2).

Wis. 1963. Injury to customer while attempting to extricate small son whose galosh was caught in escalator would be a "natural consequence" of proprietor's negligence, if proprietor were found to be negligent in maintenance of escalator.—Turk v. H. C. Prange Co., 119 N.W.2d 365, 18 Wis.2d 547.—Carr 305(1).

Wis.App. 1985. To be "natural consequence" of a felony, within meaning of felony-murder statute [W.S.A. 9A.02(2)], death must be proximately caused by defendant's conduct, and test of cause is whether defendant's conduct was substantial fact or in causing death.—State v. Noren, 371 N.W.2d 381, 125 Wis.2d 204, review denied 378 N.W.2d 292, 126 Wis.2d 519.—Homic 588.

NATURAL CONSEQUENCES

Tex.Com.App. 1927. Wrongdoer is responsible for "natural consequences" of wrongful act or omission.—Humble Oil & Refining Co. v. Wood, 292 S.W. 200, rehearing denied 294 S.W. 197.—Damag 20.

NATURAL CONSEQUENCES OF THE ACT RULE

Ind.App. 1997. With regard to liability policy with intentional act exclusion, Indiana does not endorse "natural consequences of the act rule" requiring inference of intent as a matter of law; instead, showing of "specificity to the intent" is required before insurance coverage will be denied under exclusion for intentional conduct.—Sans v. Monticello Ins. Co., 676 N.E.2d 1099, transfer denied 690 N.E.2d 1178, appeal after remand 718 N.E.2d 814, transfer denied 735 N.E.2d 226.—Insurance 2278(3).

NATURAL DANGERS

Mo.App. 1914. A master is not negligent toward a servant when he conducts his business as other prudent persons ordinarily conduct the same kind of business; and, being liable for negligence and not for danger, his duty to his servant does not

require the elimination of dangers inherent in the work conducted in a reasonably careful manner; but he is held to ordinary care to keep the dangers within their inherent bounds, and liable to a servant injured from a failure to do so, however great the "natural dangers," that term meaning those which reasonable care, having regard not only to the safety of the servant, but also the necessities of the business, cannot be expected to suppress, while the term "negligence," as to a master's duty, means the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.—*Gummerson v. Kansas City Bolt & Nut Co.*, 171 S.W. 959, 185 Mo.App. 7.

NATURAL DAUGHTER

Tex.Civ.App.—Dallas 1915. Where the issue raised was whether defendant was the daughter of decedent, or of a third person, an affirmative answer by the jury to a question, "Is [defendant] the natural daughter of [decedent]?" was a finding that defendant was the legitimate child of the decedent, justifying judgment accordingly, though the word "natural" is ambiguous and means either illegitimate or legitimate, for the jury must have understood that the words "natural daughter" referred to a legitimate daughter, though the term also means a daughter born out of wedlock.—*Gibson v. Dickson*, 178 S.W. 44, writ refused.

NATURAL DAY

R.I. 1902. The expression "natural day," as used in Pub.Laws, c. 1004, providing that no employee of a street car company shall be required to work more than 10 hours within the 24 hours of the natural day, is defined by Bouvier to be the period of time elapsing between sunrise and sunset.—In re Ten-Hour Law for Street Ry. Corporations, 54 A. 602, 24 R.I. 603, 61 L.R.A. 612.

NATURAL DEATH

Pa.Super. 1939. Where deputy coroner had never attended deceased and death was allegedly due to accidental drowning, certified copy of deputy coroner's certificate was inadmissible to prove that death was accidental, under statutes providing for death certificates by attending physician in cases of "natural death," or death by disease and admission of certified copies thereof in evidence. 35 P.S. §§ 457, 458, 471.—*Heffron v. Prudential Ins. Co. of America*, 8 A.2d 491, 137 Pa.Super. 69.—Evid 334(4), 341.

Tex.Civ.App.—Galveston 1939. Where insured died as result of sickness or disease, accelerated by shock of an operation to relieve it, operation would be regarded as a method of treatment for disease, and insured's death was a "natural death" within purview of insurance laws, so that provisions governing life policies applied, and hence beneficiary's assignee was entitled to face value of combination life, health and accident policy.—*Provident Life & Acc. Ins. Co. v. Johns*, 131 S.W.2d 781.—Insurance 2589(1).

NATURAL DEPOSIT

C.A.5 (Tex.) 1965. Water extracted by taxpayers from Ogallala formation in Southern High Plains was "natural deposit" within income tax statute relating to depletion allowances. 26 U.S.C.A. (I.R.C.1954) § 611.—*U.S. v. Shurbet*, 347 F.2d 103.—Int Rev 3480.

C.C.A.10 (Okla.) 1941. Even though sodium sulphate in solution is a "natural deposit" within meaning of revenue act, where natural deposits were mentioned only in section 23(m) dealing with depletion generally, and not in section 114(b)(2) which deals with allowances for depletion based on discovery value, taxpayer could not use discovery value as basis of depletion allowance in case of sodium sulphate in solution. Revenue Act 1934, Secs. 23(m), 114(b)(2), 26 U.S.C.A.Int.Rev.Code, 23(m), 114(b)(2).—*Ozark Chemical Co v. Jones*, 125 F.2d 1, certiorari denied 62 S.Ct. 1291, 316 U.S. 695, 86 L.Ed. 1765.—Int Rev 3486.1.

S.D.Fla. 1963. St. Augustine sod was a "natural deposit" as term is used in income tax statute providing for depletion allowance, and where harvesting of sod required removal of one and one-half to one and three-quarters inches of soil, owner-seller was entitled to depletion allowance for purpose of reporting gain from sale of sod. 26 U.S.C.A. (I.R.C.1954) §§ 611, 613(b) (6).—*Flona Corp. v. U.S.*, 218 F.Supp. 354.—Int Rev 3480.

NATURAL DEPOSIT OF REFRACTORY AND FIRE CLAY

W.D.Tex. 1956. All of the clay which corporate taxpayer engaged in making fire brick and other refractory products extracted from its pit was "refractory and fire clay", and such pit was a "natural deposit of refractory and fire clay", within meaning of statute relating to determination of basis for depreciation and depletion for certain mines and natural mineral deposits, and therefore taxpayer was entitled to a depletion deduction for such clay pit computed at the rate of 15% of taxpayer's gross income from the property, limited to 50% of its net income (computed without allowance for depletion) from the property. 26 U.S.C.A. (I.R.C.1939) §§ 23(m), 114(b)(4)(A).—*Elgin-Butler Brick Co. v. U.S.*, 146 F.Supp. 378.—Int Rev 4537.

NATURAL DEPOSITS

C.A.5 (Fla.) 1960. Where hardrock phosphate when mined was found in form of a "matrix," that is, a frame or block of hard phosphate with openings filled with sand, clay, and soft particles of phosphate, and sand, clay, and soft particles of phosphate were washed away from matrix in cleaning process and were discharged onto ground or into natural watercourses, and soft particles of phosphate accumulated as colloidal phosphate usually a quarter to a half a mile from mining activity, and years later it was discovered that colloidal phosphate had commercial value as fertilizer, and taxpayer and others searched for and found colloidal phosphate, removed overburden, and dug up colloidal phosphate and bagged it for commercial use, taxpayer's activities did not come within deple-

tion provisions of the Internal Revenue Code authorizing allowance for depletion in case of "mines," "natural deposits," and "phosphate rock." 26 U.S.C.A. (I.R.C.1939) §§ 23(m), 114(b)(3, 4).—*Soil Builders, Inc. v. U.S.*, 277 F.2d 570.—Int Rev 3487.

C.A.9 (Idaho) 1953. The words "mines" or "natural deposits" within provision of internal revenue code that reasonable allowance for depletion should be allowed in case of mines and other natural deposits are limited to natural deposits and do not include tailings severed from mines not owned by taxpayer which are thereafter deposited on earth's surface. 26 U.S.C.A. § 23(m).—*Hoban v. Viley*, 204 F.2d 459.—Int Rev 3486.1.

C.A.5 (Tex.) 1965. For cost depletion purposes, term "natural deposits" within income tax statute was not equivalent to "mineral deposits" from which income is derived through severance and sale of mineral. 26 U.S.C.A. (I.R.C.1954) §§ 611, 612, 613(b)(6)(A, B).—*U.S. v. Shurbet*, 347 F.2d 103.—Int Rev 3480.

C.C.A.9 1943. Where mining company extracted gold from dumps consisting of rocks and ore material which had never been processed, but which had been deposited upon company's lands from mines not located on such lands many years prior to company's acquisition of the lands, company, in determining taxable income was not entitled to a depletion on account of exhaustion of mine, since word "mines" as used in section of Revenue Act authorizing in case of "mines" and other natural deposits, a reasonable allowance for depletion is limited to natural deposits and does not include dumps that are made by man, the word "mines," being included in concluding classification of "natural deposits." Revenue Act 1934, § 23(m), 26 U.S.C.A. (I.R.C.1939) § 23(m).—*Consolidated Chollar Gould & Savage Min. Co. v. Commissioner of Internal Revenue*, 133 F.2d 440.—Int Rev 3491.

NATURAL DEPRESSION

Ill. 1920. Railroad can recover damages for artificial drain not in natural channel; "natural depression;" "natural water course." Within Levee Drainage Act, §§ 55, 56, requiring a railroad to construct or enlarge a bridge crossing a drain constructed on the line of any natural depression or water course, the "natural water course" is the place where the water flows according to nature, and the "natural depression" contemplated is not any low place in the valley, where water would accumulate or flow when in flood time it has spread over all the valley, but is that lowest point in the valley where the natural drainage takes the water flowing from the dominant to the servient lands, so that a railroad company is not required to erect without compensation a bridge, and to make other changes in its roadbed, made necessary by the construction of a drain in the valley outside the natural water course running through the valley, though the place where the new channel crossed the railroad track was slightly lower than the land on either side of the proposed channel.—*Indian Creek Drainage Dist.*

No. 2 v. *Chicago, B. & Q.R. Co.*, 129 N.E. 105, 295 Ill. 339.—Drains 57.

Ill. 1920. Within Levee Drainage Act, §§ 55, 56, S.H.A. ch. 42, § 12-4, requiring a railroad to construct or enlarge a bridge crossing a drain constructed on the line of any natural depression or water course, the "natural water course" is the place where the water flows according to nature, and the "natural depression" contemplated is not any low place in the valley, where water would accumulate or flow when in floodtime it has spread over all the valley, but is that lowest point in the valley where the natural drainage takes the water flowing from the dominant to the servient lands, so that a railroad company is not required to erect without compensation a bridge, and to make other changes in its roadbed, made necessary by the construction of a drain in the valley outside the natural water course running through the valley, though the place where the new channel crossed the railroad track was slightly lower than the land on either side of the proposed channel.—*Indian Creek Drainage Dist. No. 2 v. Chicago, B. & Q.R. Co.*, 129 N.E. 105, 295 Ill. 339.—Drains 57.

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NATURAL DISASTER

C.A.8 (Ark.) 1997. Farm equipment franchisor's alleged failure to prevent sale of its products from unauthorized facility in plaintiff franchisee's area of responsibility (AOR) was not "natural disaster" within meaning of Arkansas Farm Equipment Retailer Franchise Protection Act section which provides that manufacturer violates Act by attempting to threaten to terminate, cancel, fail to renew, or substantially change competitive circumstances of dealership agreement based on result of natural disaster. A.C.A. § 4-72-310(b)(4).—*Southern Implement Co., Inc. v. Deere & Co.*, 122 F.3d 503.—Trade Reg 871(1).

NATURAL DRAIN

Wash. 1963. "Natural drain" is course, formed by nature, which waters naturally and normally follow in draining from higher to lower lands.—*King County v. Boeing Co.*, 384 P.2d 122, 62 Wash.2d 545.—*Waters* 119(3).

Wash.App. Div. 2 2001. A "natural drain" is that course, formed by nature, which waters naturally and normally follow in draining from higher to lower lands.—*Rothweiler v. Clark County*, 29 P.3d 758, 108 Wash.App. 91, as amended, review denied 42 P.3d 975, 145 Wash.2d 1029.—*Waters* 119(3).

Wash.App. Div. 3 1975. "Natural drain" is one formed by nature in which surface waters drain from higher to lower elevations naturally.—*Burton v. Douglas County*, 539 P.2d 97, 14 Wash.App. 151, review denied 86 Wash.2d 1007.—*Waters* 119(3).

NATURAL DRAINAGE

La. 1951. The Civil Code article imposing the servitude of natural drainage refers strictly to "natural drainage" which was originally provided by nature by reason of the respective location or situation of the properties. LSA-C.C. arts. 659, 660.—*Elam v. Cortinas*, 53 So.2d 146, 219 La. 406.—*Waters* 119(1).

La. 1951. Where adjoining landowners by filling in the dry bed of an old bayou had reversed the flow of water therein, the "natural drainage" with respect to the properties through which bayou ran no longer existed and Civil Code article imposing servitude of natural drainage did not warrant issuance of mandatory injunction requiring removal of the filling subsequently placed in bayou by another so as to obstruct the flow of water from adjoining land. LSA-C.C. art. 660.—*Elam v. Cortinas*, 53 So.2d 146, 219 La. 406.—*Waters* 119(1), 124.

NATURAL DRAINAGEWAY

Neb. 1989. Evidence established that man-made ditch was a "natural drainageway" which existed on property at time of paving of county road, which allegedly created flooding problem.—*Gruber v. County of Dawson*, 439 N.W.2d 446, 232 Neb. 1.—*High* 120(4).

Neb. 1988. Mere presence of artificial element in drainageway does not destroy its characterization as "natural drainageway"; it is only where essential part of drainageway is artificial or manmade that natural characterization may be precluded.—*Holman v. Papio Natural Resources Dist.*, 421 N.W.2d 430, 228 Neb. 94, appeal after remand 523 N.W.2d 510, 246 Neb. 787.—*Waters* 119(3).

NATURAL DRAINS

Miss. 1910. Laws 1910, c. 183, creates a special drainage district to provide effectual drainage by artificial drains or other drainage facilities, and provides for a commission to develop a drainage system by artificial canals and by improving all natural drains. Held, that the words "natural drains," as so used, meant a natural water course, including creeks, streams, brooks, or rivers, and that

the act was therefore in violation of Const. § 90, par. "q," prohibiting the Legislature from passing special laws relating to water courses.—*Belzoni Drainage Commission v. Winn*, 53 So. 778, 98 Miss. 359.—*Statut* 77(1).

NATURAL DRAINWAY

Neb. 1985. Though there was no natural drainway crossing roads south of new bridge, as alleged by landowners who brought action against county and others for obstruction of a natural drainway, and although no watercourse existed in the case, south fork of creek was a "natural drainway," namely, a drainway which had been formed and existed in a state of nature and carried water from a higher to a lower estate.—*Belsky v. Dodge County*, 369 N.W.2d 46, 220 Neb. 76.—*Waters* 118.

NATURAL EASEMENT

Ohio App. 2 Dist. 1941. Where two parcels of land belonging to different owners lie adjacent to each other, and one parcel lies lower than the other, the lower parcel owes a "servitude" to the other to receive the water which naturally runs from it, and the owner of the upper parcel has a "natural easement" in the lower parcel to the extent of the natural flow of the water from the upper parcel to and on the lower parcel.—*McCoy v. Rankin*, 42 N.E.2d 234, 35 Ohio Law Abs. 621.—*Waters* 119(3).

NATURAL END RESULT

N.Y.A.D. 3 Dept. 1990. Substantial evidence supported State Comptroller's finding that former town police lieutenant's disability was not "natural end result" of "accident" sustained in his service as policeman, and thus that lieutenant was not entitled to receive accidental disability retirement benefits, even though psychiatrist testified that lieutenant suffered from posttraumatic stress disorder brought about by automobile collision with another police car, where another psychiatrist testified that lieutenant's disabling condition was major recurrent depression emanating from "total picture" of lieutenant's personal and professional experiences, rather than from any one event. *McKinney's Retirement and Social Security Law* § 363.—*Hearne v. Comptroller of State*, 551 N.Y.S.2d 983, 159 A.D.2d 756.—*Mun Corp* 187(9).

NATURAL, ESSENTIAL AND INHERENT RIGHTS

N.H. 1998. Parental rights are "natural, essential, and inherent rights" within meaning of due process provision of State Constitution. Const. Pt. 1, Art. 2.—*In re Baby K.*, 722 A.2d 470, 143 N.H. 201.—*Const Law* 274(5).

N.H. 1978. The family and rights of parents over it are held to be "natural, essential and inherent rights" within meaning of New Hampshire Constitution article recognizing such rights. Const. pt. 1, art. 2.—*State v. Robert H.*, 393 A.2d 1387, 118 N.H. 713.—*Const Law* 82(10).

NATURAL EXPANSION

C.A.11 (Fla.) 2001. Scope of protection enjoyed by trademark owner is not restricted to owner's original use; under "natural expansion" doctrine, owner's rights vis-a-vis junior user extend to goods on which mark has already been used or that lie within realm of natural expansion. *Lanham Trade-Mark Act*, § 43(a), 15 U.S.C.A. § 1125(a).—*Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188.—*Trade Reg* 363.1.

S.D.N.Y. 1942. In suit by manufacturer of ladies' dresses for infringement of trade-mark and unfair competition against manufacturer of fabrics sold to manufacturers of ladies' dresses, the doctrine of "natural expansion" did not apply to strengthen defendant's case in view of courts' reluctance to extend the doctrine as leading into monopoly.—*Kay Dunhill, Inc., v. Dunhill Fabrics*, 44 F.Supp. 922.—*Trade Reg* 71, 471.

M.D.Pa. 1994. Under Pennsylvania law doctrine of "natural expansion," party which may use property for certain purposes can expand facilities to accommodate increased business, as long as extension is natural and reasonable and not detrimental to public welfare, safety and health.—*Phoenix Resources, Inc. v. Duncan Tp.*, 155 F.R.D. 507.—*Zoning* 330.

N.H. 1989. Construction on building which substantially increased volume of premises, added eight to ten feet to building height via new second story, and brought premises closer to property lines, was not merely a "natural expansion" of a nonconforming use.—*Devaney v. Town of Windham*, 564 A.2d 454, 132 N.H. 302.—*Zoning* 333.1.

Pa.Cmwlth. 2001. Under the doctrine of "natural expansion," a nonconforming use cannot be limited to the precise magnitude of the use which existed at the time of adoption of the ordinance.—*Foreman v. Union Tp. Zoning Hearing Bd.*, 787 A.2d 1099.—*Zoning* 329.1.

Pa.Cmwlth. 1997. Under doctrine of "natural expansion," nonconforming use may be extended in scope, as business increases in magnitude, over ground occupied by owner of businesses at time of enactment of zoning ordinance.—*Patullo v. Zoning Hearing Bd. of Tp. of Middletown*, 701 A.2d 295.—*Zoning* 330.

Pa.Cmwlth. 1994. Under doctrine of "natural expansion," nonconforming use may be extended in scope, as business increases in magnitude, over ground occupied by owner for business at time of enactment of zoning ordinance.—*Appeal of Lester M. Prange, Inc.*, 647 A.2d 279, 166 Pa.Cmwlth. 626.—*Zoning* 330.

NATURAL EXPANSION DOCTRINE

Pa.Cmwlth. 2002. "Natural expansion doctrine" permits a landowner to develop or expand a business as a matter of right notwithstanding its status as a nonconforming use.—*Hager v. West Rockhill Tp. Zoning Hearing Bd.*, 795 A.2d 1104.—*Zoning* 329.1.

Pa.Cmwlth. 1993. "Natural expansion doctrine" provides that, to certain extent, nonconforming uses may be expanded as matter of right if matter is not detrimental to public health, safety, or welfare, but nonconforming use must still comply with dimensional, space, lot size, design, structural, or aesthetic restrictions.—*DeJuliis v. Zoning Bd. of Adjustment of City of Pittsburgh*, 625 A.2d 757, 155 Pa.Cmwlth. 569.—*Zoning* 329.1.

Pa.Cmwlth. 1992. "Natural expansion doctrine" provides that, to certain extent, nonconforming use can expand as matter of right if matter is not detrimental to public health, safety, or welfare, but nonconforming use must still comply with dimensional, space, lot size, design, structural, or aesthetic restrictions or obtain variance.—*Piecknick v. South Strabane Tp. Zoning Hearing Bd.*, 607 A.2d 829, 147 Pa.Cmwlth. 308.—*Zoning* 330.

NATURAL FACILITIES

N.Y.A.D. 2 Dept. 1967. Blind person could not be said to be possessed of his "natural faculties" within statute and hence was disqualified for jury duty. *Judiciary Law*, § 596.—*Lewinson v. Crews*, 282 N.Y.S.2d 83, 28 A.D.2d 111, affirmed 289 N.Y.S.2d 619, 21 N.Y.2d 898, 236 N.E.2d 853, remittitur amended 290 N.Y.S.2d 924, 21 N.Y.2d 1004, 238 N.E.2d 326, appeal dismissed 89 S.Ct. 46, 393 U.S. 13, 21 L.Ed.2d 12, remittitur amended 21 N.Y.2d 1042.—*Jury* 40.

NATURAL FALL

N.Y. 1914. A riparian owner had the strict legal right to have the "natural fall" in the river—that is, the difference of level between the surface where the river first touched his land and the surface where it leaves it—uninterfered with.—*McCann v. Chasm Power Co.*, 105 N.E. 416, 211 N.Y. 301.

NATURAL FATHER

C.A.8 (Iowa) 1995. Putative father of child conceived while mother was married to another man was "natural father" of child within meaning of Aid to Families with Dependent Children (AFDC) eligibility provisions; putative father was identified as father on child's birth certificate, both mother and putative father admitted his paternity, and consent paternity order entered almost 18 months after child's birth established putative father as child's father. *Social Security Act*, § 407(a), as amended, 42 U.S.C.A. § 607(a).—*Jenkins v. Palmer*, 62 F.3d 1083.—*Social S* 194.2.

Cal. 1985. Unmarried biological father was "natural father," and not "presumed father" whose consent would be necessary to proposed adoption, where he had not yet received the child into his home; if, however, he actually acquired physical custody, he could receive the child into his home and thereby acquire status of presumed father. *West's Ann.Cal.Civ.Code* §§ 7004, 7017(d); § 230 (Repealed).—*Michael U. v. Jamie B.*, 705 P.2d 362, 218 Cal.Rptr. 39, 39 Cal.3d 787.—*Adop* 7.2(3).

Cal. 1984. Both mothers and presumed fathers are entitled to custody of their minor children and

are equally entitled, and adoption can proceed only if both their consents have been given or their parental rights have been terminated, but if father is merely "natural father," i.e., he has been found to be biological father but not presumed father, mother alone is entitled to child's custody and only when natural mother relinquishes child for adoption do his rights commence. West's Ann.Cal.Civ. Code §§ 197, 221–230, 232–240, 4600, 7004, 7017.—In re Baby Girl M., 688 P.2d 918, 207 Cal.Rptr. 309, 37 Cal.3d 65, appeal after remand 236 Cal.Rptr. 660, 191 Cal.App.3d 786, appeal dismissed *McNamara v. County of San Diego Dept. of Social Services*, 109 S.Ct. 546, 488 U.S. 152, 102 L.Ed.2d 444.—Adop 7.2(1), 7.3; Child C 42; Child 20.2.

Cal.App. 1 Dist. 2000. Mother's domestic partner did not qualify as either a "presumed father" or "natural father" of child conceived by artificial insemination under the Uniform Parentage Act (UPA), despite fact that domestic partner received child into his home and openly acknowledged the child as his daughter. West's Ann.Cal.Fam.Code § 7611(d).—*Dunkin v. Boskey*, 98 Cal.Rptr.2d 44, 82 Cal.App.4th 171.—Child 34.

Cal.App. 6 Dist. 2001. "Biological father" or "natural father" is one whose biological paternity has been established, but who has not achieved presumed father status as defined in the applicable statute. West's Ann.Cal.Fam.Code § 7611.—*Francisco G. v. Superior Court*, 110 Cal.Rptr.2d 679, 91 Cal.App.4th 586.—Child 1.

Md.App. 1987. Man's being named by mother of child in the school records as the father of the child did not constitute a declaration that he was the natural father within meaning of statute defining "natural father." Code, Family Law, § 5–310(a)(4).—In re Erica S., 524 A.2d 108, 71 Md.App. 148.—Parent & C 1.

NATURAL FLOOD CHANNEL

N.Y.Sup. 1928. In action against city for damage to plaintiff's property by flood, evidence that creek overflowed banks generally at time of flood, and that when flood subsided waters drained off at certain point and re-entered creek, did not show continuous flow of creek after water spread over banks, and did not establish at such point "natural flood channel," defined as channel beginning at some point on banks of stream and ending at some other point lower down stream, through which flood waters naturally flow at times of high water.—*C.M. Bott Furniture Co. v. City of Buffalo*, 227 N.Y.S. 660, 131 Misc. 624.—Mun Corp 845(4).

NATURAL FLOW

Ill. 1914. Though, since the public have an easement in all natural water courses and consequently a right that the natural flow thereof shall be unimpeded and unobstructed, by "natural flow," meaning all water which naturally drains through that channel, including the increase by artificial draining, a railroad in crossing such a stream must so construct its bridge as to accommodate not only the then existing flow, but any increase due to im-

proved draining, yet where, in draining a district, a river 55 miles long was diverted into a creek 5 miles long, over which a railroad crossed, and the current of the creek reversed, the railroad could not be required at its own expense to so alter its bridge as to accommodate this flow, since it was not the natural flow and would result in depriving the railroad of its property without compensation.—*People ex rel. Peeler v. Chicago & E.I.R. Co.*, 262 Ill. 492, 104 N.E. 831, L.R.A. 1915B,486.

Ind.App. 1 Div. 1903. The term "natural flow," as used in statutes regulating the control of natural gas wells, necessarily means the entire volume of gas that will issue from the mouth of a well when retarded only by the atmospheric pressure.—*Richmond Natural Gas Co. v. Enterprise Natural Gas Co.*, 66 N.E. 782, 31 Ind.App. 222.

Mass. 1896. St.1875, c. 217, authorizes the city of Taunton to take water from a pond, provided that a dam shall be built, where it flows into N. river, sufficient in height to retain sufficient water for one year's supply for the city, and that the "natural flow" of the pond into N. river shall at all times be maintained. Held, that the expression "natural flow" means the quantity of water ordinarily flowing in the stream at times when its volume is not increased by unusual freshets or rains.—*Nemasket Mills v. City of Taunton*, 44 N.E. 609, 166 Mass. 540.—Waters 190.

N.Y.Sup. 1930. In covenant to maintain "normal" and "natural" flow of water, exclusive of "storm water," below point of diversion, by replacement from impounded storm waters above point, of amount of water equal to amount taken, "storm water" meant excess flow over mean flow during March, April, and May which could regularly be counted on. "Storm water" is water that promptly runs off the surface into a stream after storms, although all water is storm water, because, whether denominated ground water, surface water, or storm water, it comes from the heavens in rain or snow storms. Broadly speaking, "storm water" includes the freshest flows of spring months brought about through the melting of snows, spring rains, and also the flows following on heavy rains in other months so far as they suddenly and temporarily raise the flow of the stream above the normal flow. "Normal flow" means flow that is not affected by "storm water." "Natural flow" is the flow of the stream unaffected by artificial conditions.—*Adirondack Power & Light Corp. v. City of Little Falls*, 265 N.Y.S. 567, 148 Misc. 191.

Okla. 1953. Under statutes limiting each owner of gas wells producing gas from common reservoir to taking the proportion of gas which the "natural flow" of his wells bears to the "natural flow" of each other gas producer, and authorizing Corporation Commission to establish rules and regulations for determining the "natural flow" of the wells, quoted words mean the total volume of gas which a given well will produce. 52 O.S.1951 §§ 232, 233, 239.—*Anderson-Prichard Oil Corp. v. Corporation Com'n*, 252 P.2d 450, 207 Okla. 686, 1953 OK 9.—Mines 92.50.

NATURAL FLOW OF SURFACE WATERS

Tex.App.—Dallas 1990. City violated Water Code prohibition against restricting “natural flow of surface waters” by maintaining embankment which channeled flow of water from higher to lower elevation properties so as to cause flooding to building located on lower property, despite claim that flow was not natural because it had been altered by the upper property owner removing agricultural terracing which had acted as series of dams to prevent water flow; leveling of land to remove agricultural terracing had returned land to its natural state. V.T.C.A., Water Code § 11.086(a).—City of Princeton v. Abbott, 792 S.W.2d 161, writ denied.—Waters 119(2).

NATURAL FLOW THEORY

Conn. 2002. Until 1982, which was year of passage of Water Diversion Policy Act transforming state into a regulated riparian jurisdiction, state followed the “natural flow theory” of riparian rights, under which each riparian owner on a waterbody is entitled to have the water flow across, or lie upon, the land in its natural condition, without alteration by others of the rate of flow or the quantity of the water. C.G.S.A. § 22a-365 et seq.—City of Waterbury v. Town of Washington, 800 A.2d 1102, 260 Conn. 506.—Waters 51.

NATURAL FOOL

Neb. 1906. A “natural fool” is one that hath no understanding of his nativity and therefore is by law presumed never likely to obtain any.—Hauber v. Leibold, 107 N.W. 1042, 76 Neb. 706.

NATURAL GAS

C.A.5 1957. “Casinghead gas” produced from a well, was “natural gas” within meaning of section of Natural Gas Act defining natural gas as either natural gas unmixed, or any mixture of natural and artificial gas. Natural Gas Act, § 2(5), 15 U.S.C.A. § 717a(5).—Deep South Oil Co of Tex v. Federal Power Commission, 247 F.2d 882, dissenting opinion Humble Oil & Refining Co V Federal Power Commission, 247 F.2d 903, certiorari denied 78 S.Ct. 410, 355 U.S. 930, 2 L.Ed.2d 413, certiorari denied 78 S.Ct. 410, 355 U.S. 930, 2 L.Ed.2d 413.—Gas 2.

C.A.10 1993. Neither language of Safe Drinking Water Act (SDWA), nor relevant legislative history, reveals clear congressional intent to treat carbon dioxide as “natural gas” within meaning of Act. Public Health Service Act, §§ 1401–1465, as amended, 42 U.S.C.A. §§ 300f to 300j–25.—Arco Oil and Gas Co. v. E.P.A., 14 F.3d 1431.—Waters 196.

C.A.5 (Tex.) 1986. White oil, or natural gasoline, produced in gas well through use of low temperature extractor, was “natural gas” rather than “crude petroleum oil” under Texas law, and thus, oil well lessee could not use the white oil to change classification of well from gas well to oil well for purposes of affecting rights and obligations under operating agreement. V.T.C.A., Natural Re-

sources Code § 86.002; Vernon’s Ann.Texas Civ. St. arts. 6008, 6008, § 2, 6008, § 2(j), 6008a, § 3(h) (Repealed).—Colorado Interstate Gas Co. v. Hufo Oils, 802 F.2d 133, rehearing denied 806 F.2d 261.—Mines 109.

C.A.10 (Wyo.) 1992. Bureau of Land Management reasonably concluded that carbon dioxide was “natural gas” within meaning of Mineral Leasing Act; thus, agency’s decision to issue a permit for a carbon dioxide pipeline right-of-way across federal lands under the Mineral Leasing Act, rather than under Federal Land Policy and Management Act, was not improper. Mineral Lands Leasing Act, § 28, 30 U.S.C.A. § 185; Federal Land Policy and Management Act of 1976, § 501(a)(2), 43 U.S.C.A. § 1761(a)(2).—Exxon Corp. v. Lujan, 970 F.2d 757.—Gas 9.

S.D.Tex. 1927. “Natural gas,” whatever its source, is a mixture of a number of different hydrocarbons.—Carbide & Carbon Chemicals Corp. v. Texas Co., 21 F.2d 199, affirmed 31 F.2d 32.

D.Wyo. 1990. Term “natural gas,” as used in Mineral Leasing Act (MLA), has within its scope all gases emerging at a wellhead. Mineral Lands Leasing Act, §§ 28, 28(a), (r)(1), (r)(2)(A), 30 U.S.C.A. §§ 185, 185(a), (r)(1), (r)(2)(A).—Exxon Corp. v. Lujan, 730 F.Supp. 1535, affirmed 970 F.2d 757.—Mines 5.1(1).

Ark. 1912. “Natural gas” is a mineral, and is a part of the land until severed.—Osborn v. Arkansas Territorial Oil & Gas Co., 146 S.W. 122, 103 Ark. 175.

La. 1934. Under oil and gas lease, leasing all natural gas, lessee held entitled to extract gasoline from gas, gasoline being one of constituent elements of “natural gas.”—Wall v. United Gas Public Service Co., 152 So. 561, 178 La. 908.—Mines 73.1(7).

N.D. 1987. “Residue gas” which has had its liquid hydrocarbons or impurities removed by processing qualifies as “natural gas” within the statute exempting from gas production tax gas used in the operation of lease or premises in the drilling for or production of oil or gas. NDCC 38–08–02, subd. 15, par. a, 38–08–03, 38–08–16, 57–51–01, subd. 3.—Amerada Hess Corp. v. Conrad, 410 N.W.2d 124.—Mines 87.

Ohio 1999. Suppliers of liquid petroleum (LP) gas were not “natural gas companies” or “gas companies” as defined by statute, and thus, they were not “public utilities” subject to the regulatory jurisdiction of the Public Utilities Commission; LP gas was manufactured, and thus, was not a “natural gas,” and was in liquid, not gas, form when delivered to consumers, such that it was not an “artificial gas” when supplied. R.C. §§ 4905.02, 4905.03(A)(5, 6), 4905.04.—Haning v. Pub. Util. Comm., 712 N.E.2d 707, 86 Ohio St.3d 121, 1999-Ohio-90.—Pub Ut 112.

Ohio 1941. Where gas company was required by ordinance of City of Columbus which was approved by majority of electors voting on the question, to furnish natural gas of heat value above a

prescribed minimum, at a certain rate which was lower than previous rate charged, and company which filed a complaint against the ordinance, with the Public Service Commission, engaged in a secret and undisclosed practice of mixing manufactured gases with natural gases and furnishing the combined product to gas users of city, the commission in determining reasonable rate erred in failing to eliminate entirely from computation, expenses of company connected with procurement and distribution of manufactured gases, and commission's order was remanded with instructions to fix new rate. "Manufactured gas" is a substance produced by human skill and art. "Natural gas" comes from the great laboratory of nature.—*Ohio Fuel Gas Co. v. Public Utilities Commission*, 35 N.E.2d 829, 138 Ohio St. 483, 21 O.O. 62.

Okla. 1953. Where purchaser contracted for all natural gas underlying producer's gas reserves, and, under contract, rough gas was delivered to purchaser, returned to producer for processing, and redelivered to purchaser, the gas finally delivered to purchaser was "natural gas", within order of Corporation Commission fixing price for all natural gas taken from gas field, and fact that after it was taken from well it was cleaned up and processed before final delivery to ultimate consumer did not change its character as such. 52 O.S.1951 §§ 233, 239.—*Natural Gas Pipe Line Co. of America v. Panoma Corp.*, 271 P.2d 354, 1953 OK 241, probable jurisdiction noted *Natural Gas Pipeline Company of America v. Panoma Corporation and the Corporation Commission of State of Oklahoma*, 75 S.Ct. 105, 348 U.S. 869, 99 L.Ed. 683, reversed 75 S.Ct. 576, 349 U.S. 44, 99 L.Ed. 866.—*Mines* 92.67.

Okla. 1924. Generally, "natural gas" is a gaseous product arising from petroleum wells. It is divided into two classes, dry natural gas and wet natural gas. Dry natural gas is defined as "natural gas which does not contain an appreciable amount of readily condensable gasoline; it is usually not intimately associated with petroleum." Wet natural gas is defined as "natural gas from which a gasoline can be extracted in sufficient quantities to warrant the installation of a plant, or natural gas which contains readily condensable gasoline."—*Musselmen v. Magnolia Petroleum Co.*, 231 P. 526, 107 Okla. 183, 1924 OK 297.

Tenn. 1991. "Natural gas" statute imposing gross receipts tax upon distributors of natural gas, meant natural gas transmitted and distributed through pipelines to ultimate consumer and, thus, tax did not apply to propane gas distributor, even though propane may technically be integral component of natural gas. T.C.A. §§ 67-4-405, 67-4-405(a)(2), 67-4-708.—*National Gas Distributors, Inc. v. State*, 804 S.W.2d 66.—*Tax* 1291.

Tex.Civ.App.—Eastland 1931. Under a deed whose legal effect is to convey all natural gas, the term "natural gas" has reference to all its constituent elements, including the gasoline which is subsequently separated from the gas and reduced to liquid by manufacturing processes.—*Lone Star Gas Co. v. Harris*, 45 S.W.2d 664, writ refused, rehearing denied 45 S.W.2d 998.

Wyo. 1988. "Natural gas" within meaning of statute, which levies two percent excise tax on value of extracted natural gas, has technical meaning, includes all gases occurring naturally and gas produced from drilled wells, and includes hydrocarbons and nonhydrocarbons such as carbon dioxide. W.S. 1977, §§ 8-1-103, 39-6-302(a).—*Amoco Production Co. v. State*, 751 P.2d 379.—*Mines* 87.

NATURAL GAS COMPANIES

C.A.D.C. 1974. Producers who owned gas field and who entered into contract with pipeline company for lease-sale of the field were "natural gas companies" within the meaning of the Natural Gas Act and were subject to the regulation by the Federal Power Commission. *Natural Gas Act*, §§ 2(6), 4(a) as amended 15 U.S.C.A. §§ 717a(6), 717c(a).—*Public Service Commission of State of N.Y. v. Federal Power Commission*, 543 F.2d 757, 43 A.L.R. Fed. 698, 177 U.S.App.D.C. 272, on remand *TEXAS EASTERN TRANSMISSION CORPORATION, M. H. MARR, CONTINENTAL OIL COMPANY, SUN OIL COMPANY, GENERAL CRUDE OIL COMPANY*, 1976 WL 14651, order clarified *TEXAS EASTERN TRANSMISSION CORPORATION, ET AL.*, 1976 WL 14793.—*Gas* 2.

Ohio 1999. Suppliers of liquid petroleum (LP) gas were not "natural gas companies" or "gas companies" as defined by statute, and thus, they were not "public utilities" subject to the regulatory jurisdiction of the Public Utilities Commission; LP gas was manufactured, and thus, was not a "natural gas," and was in liquid, not gas, form when delivered to consumers, such that it was not an "artificial gas" when supplied. R.C. §§ 4905.02, 4905.03(A)(5, 6), 4905.04.—*Haning v. Pub. Util. Comm.*, 712 N.E.2d 707, 86 Ohio St.3d 121, 1999-Ohio-90.—*Pub Ut* 112.

NATURAL GAS COMPANY

U.S.Dist.Col. 1954. Independent natural gas producer, which sold gas to interstate pipeline companies for interstate transportation and resale, was a "natural gas company" within Natural Gas Act, and its sales were not within section of that Act exempting "production or gathering of natural gas". *Natural Gas Act*, §§ 1 et seq., 1(b), 2(6), 4, 15 U.S.C.A. §§ 717 et seq., 717(b), 717a(6), 717c.—*Phillips Petroleum Co. v. State of Wis.*, 74 S.Ct. 794, 347 U.S. 672, 98 L.Ed. 1035, rehearing denied *Phillips Petroleum Company v. State of Wisconsin*, 75 S.Ct. 17, 348 U.S. 851, 99 L.Ed. 670, rehearing denied *State of Texas v. State of Wisconsin*, 75 S.Ct. 18, 348 U.S. 851, 99 L.Ed. 670.—*Gas* 2.

U.S.Dist.Col. 1950. Where natural gas was transported into Ohio from other states through interstate pipe lines which, inside the Ohio boundary, connected with the high-pressure trunk lines of Ohio gas company and was transported through such high-pressure lines to the local distribution systems of the company, the company was a "natural gas company" within definition of the Natural Gas Act, and was subject to jurisdiction of the Federal Power Commission, though state commis-

sion might also have some regulatory power. Natural Gas Act, §§ 1(b), 2(6), 5(b), 15 U.S.C.A. §§ 717(b), 717a(6), 717d(b).—Federal Power Commission v. East Ohio Gas Co., 70 S.Ct. 266, 338 U.S. 464, 94 L.Ed. 268, rehearing denied 70 S.Ct. 515, 338 U.S. 905, 94 L.Ed. 1334.—Commerce 62.2.

U.S.Ill. 1942. Illinois communities which were supplied with natural gas by companies, which transported the gas interstate, constituted a "market" already served by a "natural gas company" within provisions of Natural Gas Act defining a natural gas company and requiring certificate of public convenience and necessity issued by the Federal Power Commission to authorize a natural gas company to acquire facilities for transportation or engage in transportation of natural gas to market in which such gas is already being served by another natural gas company, or to sell natural gas in any such market. Natural Gas Act §§ 2(6), 7(c), 15 U.S.C.A. §§ 717a(6), 717f(c).—Illinois Natural Gas Co. v. Central Illinois Public Service Co., 62 S.Ct. 384, 314 U.S. 498, 86 L.Ed. 371.—Gas 6.

U.S.Mich. 1951. A company which is engaged in the transportation of natural gas by pipe line from fields in Texas, Oklahoma and Kansas into areas which include the state of Michigan is a "natural gas company" within the coverage of the Natural Gas Act and subject thereunder to regulation by the Federal Power Commission. Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.—Panhandle Eastern Pipe Line Co. v. Michigan Public Service Commission, 71 S.Ct. 777, 341 U.S. 329, 95 L.Ed. 993.—Gas 1.

C.A.D.C. 1979. An exporter of natural gas that is not otherwise engaged in interstate gas transactions is not a "natural-gas company" within meaning of Natural Gas Act definition of "natural-gas company" as a person engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale, in view of Act's definition of interstate commerce as commerce between any point in a state and any point outside thereof or between points within the same state but through any place outside thereof but only insofar as such commerce takes place within the United States. Natural Gas Act, §§ 2(6), 7, 4, 5, 15 U.S.C.A. §§ 717a(6), 717c, 717d.—Compania de Gas de Nuevo Laredo, S. A. v. Federal Energy Regulatory Commission, 606 F.2d 1024, 196 U.S.App.D.C. 117.—Commerce 62.2.

C.A.D.C. 1953. Where corporation, which produced, gathered and processed natural gas from wells in three states through nine gathering systems and ten processing plants and, at point after completion of production and gathering and after processing had begun, sold, to interstate pipeline companies, gas for interstate transportation and resale, such sales were not within Natural Gas Act provision exempting "production or gathering of natural gas", and, therefore, operator was a "natural-gas company" within such act, and the Federal Power Commission should have fixed rates for such sales. Natural Gas Act, §§ 1 et seq., 1(a), 2(6), 5(a), 19(b), 15 U.S.C.A. §§ 717 et seq., 717(a), 717a(6), 717d(a), 717r(b).—State of Wis. v. Federal

Power Commission, 205 F.2d 706, 92 U.S.App.D.C. 284, certiorari denied Phillips Petroleum Co. v. State of Wis., 74 S.Ct. 218, 346 U.S. 896, 98 L.Ed. 397, vacated 74 S.Ct. 374, 346 U.S. 934, 98 L.Ed. 424, certiorari denied State of Tex. v. State of Wis., 74 S.Ct. 218, 346 U.S. 896, 98 L.Ed. 397, vacated 74 S.Ct. 375, 346 U.S. 934, 98 L.Ed. 424, certiorari denied 74 S.Ct. 226, 346 U.S. 896, 934 L.Ed. 397, vacated 74 S.Ct. 376, 346 U.S. 935, 98 L.Ed. 424, certiorari granted 74 S.Ct.—Gas 14.3(2).

C.A.D.C. 1948. A company operating gas pipe line in Texas, which sold gas to consumer for use in Mexico, was not subject to Natural Gas Act defining "natural gas company" as person engaged in transportation of gas in "interstate commerce" which does not include foreign commerce, and hence was not required to have certificate of public convenience and necessity. Natural Gas Act, §§ 2(7), 3, 7(c), 15 U.S.C.A. §§ 717a(7), 717b, 717f(c); Executive Order July 13, 1939, No. 8202.—Border Pipe Line Co. v. Federal Power Commission, 171 F.2d 149, 84 U.S.App.D.C. 142.—Commerce 62.2; Gas 6.

C.A.5 1979. State is excluded from definition of a "natural gas company" under the Natural Gas Act. Natural Gas Act, §§ 2, 2(1-3, 6), 15 U.S.C.A. §§ 717a, 717a(1-3, 6).—Public Service Co. of North Carolina, Inc. v. Federal Energy Regulatory Commission, 587 F.2d 716, certiorari denied Louisiana v. Federal Energy Regulatory Commission., 100 S.Ct. 166, 444 U.S. 879, 62 L.Ed.2d 108, certiorari denied Texas v. Federal Energy Regulatory Commission., 100 S.Ct. 167, 444 U.S. 879, 62 L.Ed.2d 108.—Commerce 62.2; Gas 2.

C.A.5 1957. Where seller of gas produced and sold casinghead gas at or near a wellhead from certain wells in two fields, and gas well gas from one well in one of the fields, all within one state, and such gas was commingled in purchaser's field pipelines with casinghead gas from a number of other wells in the field and processed and thereafter sold in interstate commerce, seller was making sales in interstate commerce of natural gas for resale, and was a "natural-gas company" within meaning of section of Natural Gas Act defining a natural-gas company as a person engaged in transportation of natural gas in interstate commerce, or sale in interstate commerce of such gas for resale. Natural Gas Act, § 2(6), 15 U.S.C.A. § 717a(6).—Shell Oil Co. v. Federal Power Commission, 247 F.2d 900, certiorari denied 78 S.Ct. 410, 355 U.S. 930, 2 L.Ed.2d 413, rehearing denied 78 S.Ct. 533, 355 U.S. 967, 2 L.Ed.2d 543.—Gas 2.

C.A.5 1957. Seller of casinghead gas and gas well gas sold at its wells, gathered with other gas, processed, and sold in interstate commerce, was a "natural-gas company" within meaning of section of Natural Gas Act defining a natural-gas company as a person engaged in transportation of natural gas in interstate commerce, or sale in interstate commerce of such gas for resale. Natural Gas Act, § 2(6), 15 U.S.C.A. § 717a(6).—Deep South Oil Co. of Tex. v. Federal Power Commission, 247 F.2d 882, dissenting opinion Humble Oil & Refining Co. V Federal Power Commission, 247 F.2d 903, certiorari denied

78 S.Ct. 410, 355 U.S. 930, 2 L.Ed.2d 413, certiorari denied 78 S.Ct. 410, 355 U.S. 930, 2 L.Ed.2d 413.—Gas 2.

C.A.8 1966. Company engaged in production, transportation, and sale of natural gas to utilities for resale and to industrial customers for direct consumption was “natural gas company” within Natural Gas Act provision defining that term. Natural Gas Act, § 2(6) as amended 15 U.S.C.A. § 717a(6).—Panhandle Eastern Pipe Line Co. v. Federal Power Commission, 359 F.2d 675.—Gas 4.1.

C.C.A.10 1944. A company engaged in business of producing, gathering, transporting, and selling interstate natural gas for resale for ultimate public consumption, whose production and gathering properties and facilities were parts of its integrated operations, was a “natural gas company” subject to jurisdiction of Federal Power Commission in respect to rates for gas transported and sold in such commerce. Natural Gas Act, §§ 1(a, b), 2(6), 4(a), 5(a), 6(a), 7–11, 14(a), 15 U.S.C.A. §§ 717(a, b), 717a(6), 717c(a), 717d(a), 717e(a), 717f–717j, 717m(a).—Colorado Interstate Gas Co. v. Federal Power Commission, 142 F.2d 943, certiorari granted 65 S.Ct. 129, 323 U.S. 700, 89 L.Ed. 565, certiorari granted Canadian River Gas Company v. Federal Power Commission, 65 S.Ct. 129, 323 U.S. 700, 89 L.Ed. 565, vacated 65 S.Ct. 428, 323 U.S. 807, 89 L.Ed. 565, certiorari granted. Colorado-Wyoming Gas Company v. Federal Power Commission, 65 S.Ct. 136, 323 U.S. 701, 89 L.Ed. 565, affirmed 65 S.Ct. 829, 324 U.S. 581, 89 L.Ed. 1206, motion denied 65 S.Ct. 1019, 324—Gas 14.3(2).

Ohio 1995. Acquisition of natural gas from natural gas companies that merely marketed natural gas was subject to sales and use taxes; such vendors were not encompassed within statutory definition of “natural gas company.” R.C. §§ 5739.02(B)(7), 5741.02(C)(2).—Gen. Motors Corp. v. Tracy, 652 N.E.2d 188, 73 Ohio St.3d 29, 1995-Ohio-294, rehearing denied 655 N.E.2d 188, 74 Ohio St.3d 1410, certiorari granted 116 S.Ct. 1349, 517 U.S. 1118, 134 L.Ed.2d 519, affirmed 117 S.Ct. 811, 519 U.S. 278, 136 L.Ed.2d 761.—Tax 1241.1.

Ohio 1995. Independent natural gas company was not “supplying” customer with natural gas, but was merely marketing natural gas and, therefore, company was not “natural gas company” within meaning of sales and use tax exemption granted to sales of natural gas by natural gas companies. R.C. § 5739.02(B)(7).—Chrysler Corp. v. Tracy, 652 N.E.2d 185, 73 Ohio St.3d 26, 1995-Ohio-124.—Tax 1241.1.

Ohio 1989. Company which sold two consumers substantial volumes of natural gas monthly over an extended period of time was in the business of supplying natural gas to consumers and was a “natural gas company” and a “public utility” subject to regulation by the Public Utilities Commission. R.C. §§ 4905.02, 4905.03(A)(6).—Atwood Resources, Inc. v. Public Utilities Com’n of Ohio, 538 N.E.2d 1049, 43 Ohio St.3d 96.—Gas 1.

Ohio App. 4 Dist. 1996. Propane gas supplier was “natural gas company” whose sale of propane gas to residential customers was not “consumer transaction” governed by Consumer Sales Practices Act. R.C. §§ 1345.01 et seq., 4905.03.—Haning v. Rutland Furniture, 684 N.E.2d 713, 115 Ohio App.3d 61.—Cons Prot 6.

NATURAL GAS OF MERCHANTABLE QUALITY

Kan. 1970. “Natural gas of merchantable quality”, as used in contract between carrier and distributor, did not refer to malodorized gas coming from pipeline, and did not require that carrier inject malodorizing agent.—McAfee v. City of Garnett, 469 P.2d 295, 205 Kan. 269.—Gas 13(1).

NATURAL GASOLINE

Tex.App.—Austin 1986. “Crude petroleum oil” refers to substance in ground in natural and unrefined state, and “natural gasoline” is a substance manufactured from casinghead gas or other gas, which is not a crude petroleum substance for purposes of classification of wells as either “oil wells” or “gas wells.” V.T.C.A., Natural Resources Code § 86.002(11).—Hufo Oils v. Railroad Com’n of Texas, 717 S.W.2d 405, writ denied.—Mines 92.54.

NATURAL GAS PIPELINE COMPANY

Mass. 1975. Liquid natural gas company, which planned to construct facility for liquefaction, storage, transportation and distribution of liquefied natural gas, rather than transmission lines for natural gas, was not “natural gas pipeline company” within purview of statute providing that any corporation which holds certificate of public convenience and necessity authorizing it to construct natural gas transmission line and appurtenant facilities within commonwealth shall be considered as natural gas pipeline company and that such company is a public service corporation. M.G.L.A. c. 164 §§ 1 et seq., 75B; Natural Gas Act, §§ 1–24, 2(5), 15 U.S.C.A. §§ 717–717w, 717a(5).—Save the Bay, Inc. v. Department of Public Utilities, 322 N.E.2d 742, 366 Mass. 667.—Gas 4.1.

NATURAL GAS ROYALTY

C.A.5 (Tex.) 1966. “Natural gas royalty” in legal concept is a deferred payment for initial grant, but it bears direct relation to current production or occasionally depends on nonproduction, for example under take-or-pay, minimum nomination requirements. Natural Gas Act, §§ 1(b), 4, 5, 7, 15 U.S.C.A. §§ 717(b), 717c, 717d, 717f.—J. M. Huber Corp. v. Denman, 367 F.2d 104.—Mines 79.1(1).

NATURAL GUARDIAN

Ark. 1910. Under Kirby’s Dig. § 3757, and under the common law, the father, unless incompetent or unfit, is the “natural guardian” and entitled to the care, custody, and education of his minor children, and, even as between the father and the mother, the custody in the father is generally allowed unless the child, on account of tender years, or being a female, imperatively requires that attention which a mother only can supply. But between

the parent and the grandparent or any one else, the law prefers the former as custodian of the child, unless the parent is incompetent, or unfit because of his or her poverty or depravity to provide the proper physical comforts and moral training.—*Baker v. Durham*, 129 S.W. 789, 95 Ark. 355.

Ga. 1956. A guardian by nature is commonly designated as a "natural guardian".—*McCallum v. Bryant*, 92 S.E.2d 531, 212 Ga. 348.—*Guard & W* 4.

Kan. 1940. Where children of deceased sister of testator joined in action based on oral contract allegedly entered into for the children during their infancy by their father, under which testator agreed to leave will devising in certain manner all of his property, including property obtained by testator from his father, if testator's brothers and the children would forego institution of action to set aside deeds obtained by testator from his father and to require distribution of his father's estate, the children "ratified" action of their father as their "natural guardian" in entering into the contract, even though their father was not legally authorized to act for them. *Gen.St.*1935, 33-106.—*Paton v. Paton*, 103 P.2d 826, 152 Kan. 351.—*Guard & W* 70.

Mich. 1910. The father is the "natural guardian" of his child.—*In re Knott*, 126 N.W. 1040, 162 Mich. 10.

N.Y.Sur. 1943. Grandparent of orphan under age of 14 was not orphan's "natural guardian" and could not adopt orphan, against wishes of orphan's testamentary guardians. *Domestic Relations Law*, §§ 109, subd. 6, 111, subd. 4.—*Matter of Mendelsohn's Adoption*, 39 N.Y.S.2d 384, 180 Misc. 147.—*Adop* 7.1.

NATURAL GUARDIANS

Wash. 1942. Parents are the "natural guardians" of their minor children and entitled to their custody and control, and their right is in the nature of a trust reposed in them, but is subject to their correlative duty to care for and protect their children, and may be terminated by their failure to discharge their obligation to their children.—*In re Hudson*, 126 P.2d 765, 13 Wash.2d 673.—*Child C* 22.

NATURAL GUARDIANSHIP

Pa.Super. 1939. "Natural guardianship" confers no right to intermeddle with the property of infant but is a mere personal right in the father or other ancestor to the custody of the person of his heir apparent or presumptive until attaining 21 years of age, and a natural guardian or a guardian by nature has no authority to exercise any control over the estate of the minor. 20 P.S. c. 3, Appendix, §§ 1021, 1022, 1024-1026; 46 P.S. § 601(47).—*Daniels v. Metropolitan Life Ins. Co.*, 5 A.2d 608, 135 Pa.Super. 450.—*Guard & W* 4, 37.

NATURAL HAZARDOUS WASTE

Del.Super. 1990. State Department of Natural Resources and Environmental Control had found that real estate developer had deposited "natural

hazardous waste" in pits in violation of statute, even though order requiring cleanup did not specifically use that term; specific findings made by Department had embodied requisites set forth in definition of "hazardous waste" by explaining that developer had deposited solid wastes which because of their quality posed substantial hazard to human health. 7 Del.C. § 6302(7).—*T.V. Spano Bldg. Corp. v. Wilson*, 584 A.2d 523, appeal after remand 1992 WL 1364297, affirmed 628 A.2d 53.—*Environ Law* 439.

NATURAL HEIR

Ind. 1892. "Natural heir," as used in the statutes declaring that after adoption the adopted child shall be entitled to and receive all the rights and interests in the estate of such adopting father and mother, by descent or otherwise, that such child would have if the natural heir of such adopting father and mother, means natural child.—*Markover v. Krauss*, 31 N.E. 1047, 132 Ind. 294, 17 L.R.A. 806.

Wis. 1955. Where first sister of testatrix adopted a daughter more than 20 years before testatrix executed will giving half of estate of testatrix to her brother and half to first sister, and providing that in the case of the death of either brother or first sister, his or her share should go to his or her "natural heirs" as defined in Wisconsin laws of descent and distribution, and at time of execution of will first sister was 58-years old, and no provision was made in will for second sister of testatrix, and both sisters predeceased testatrix, adopted daughter was entitled to take the first sister's share as her "natural heir" rather than the children of the second sister. *St.*1953, §§ 237.01 et seq., 237.04, 318.01 et seq., 322.07(1).—*In re Rhodes' Estate*, 73 N.W.2d 602, 271 Wis. 342.—*Adop* 21; *Wills* 506(5).

NATURAL HEIRS

Ark. 1915. The term "natural heirs," in a deed to one and her natural heirs, with no context to explain it, is to be given its legal and technical meaning, as it cannot be assumed the word "natural" was surplusage.—*Maynard v. Henderson*, 173 S.W. 831, 117 Ark. 24, *Am. Ann. Cas.* 1917A, 1157.—*Deeds* 105.

Ark. 1915. The term "natural heirs," in a deed to one and to her natural heirs, is not to be construed as meaning heirs generally, but as heirs of the body.—*Maynard v. Henderson*, 173 S.W. 831, 117 Ark. 24, *Am. Ann. Cas.* 1917A, 1157.—*Deeds* 105.

Ark. 1915. A grantor deeded lands to M. "and to her natural heirs." M. died leaving a husband and son surviving. Held, the term "natural heirs" meant "heirs to the body," and that the land descended to M.'s son.—*Maynard v. Henderson*, 173 S.W. 831, 117 Ark. 24, *Am. Ann. Cas.* 1917A, 1157.—*Deeds* 127(1).

Ill. 1913. Where a testator, after devising to his wife a life estate in his realty, directed that after her death it should be divided between his children or

their natural heirs, a fixed number of acres being given to each child, and one of the children predeceased the testator, leaving no descendants, that legacy lapsed, for the term "natural heirs" must be understood as heirs of the body, as distinguished from collateral heirs, and, as the child left no descendants, the lapse was not saved by Descent of Property Act, S.H.A. ch. 3, § 200, providing that in case of a devise to a child or grandchild, where no provision is made for lapse, the issue, if there be any of such devisee, shall take the estate devised in case of the devisee's death before the testator.—*Tea v. Millen*, 101 N.E. 209, 45 L.R.A.N.S. 1163, 257 Ill. 624.

Ill.App. 3 Dist. 1953. A gift to the "natural heirs" of testatrix' cousin if cousin should predecease testatrix did not include the adopted son of cousin, since an adopted child is an heir only by virtue of legislative provisions.—*Hoog v. Litchfield Bank & Trust Co.*, 111 N.E.2d 182, 349 Ill.App. 444.—Wills 506(5).

Ky. 1927. Under will leaving property to sons till survivor's death, remainder to surviving children or their "natural heirs," children and heirs surviving testatrix cannot transfer satisfactory title before surviving life tenant's death. *Ky.St.* § 2341.—*Ford v. Jones*, 3 S.W.2d 781, 223 Ky. 327.—*Ven & Pur* 130(4).

Ky. 1923. The term "natural heirs" and "heirs of the body" in a will or deed are considered as of the same legal import, but the term "lawful issue" is not in all respects synonymous with the term "lawful bodily heirs," nor is "issue" equivalent to "heirs of the body."—*Yarrington v. Freeman*, 255 S.W. 1034, 201 Ky. 135.—*Deeds* 123; *Wills* 506(1).

Mo. 1913. A bequest of income over to "natural heirs" of specified persons was a bequest to their children; such intent of testator appearing from the context of the will.—*Naylor v. McRuer*, 154 S.W. 772, 248 Mo. 423.—*Wills* 506(4).

Pa. 1934. Will providing that, 'if any of my children shall die without children, their portion shall revert to the other heirs,' and, 'if any of my sons should die without natural heirs, his widow shall have his portion while she remains his widow,' held to use words 'children,' 'heirs,' and "natural heirs" interchangeably. "Natural heirs," are lineal descendants, heirs begotten of the body, and, as used in a will and by way of executory devise, such terms are to be considered as of the same legal import as 'heirs of the body.' Where word 'children' is used in sense of meaning 'heirs of the body' or 'issue,' it is a word of limitation.—*Crawford v. Withrow*, 171 A. 894, 314 Pa. 497.—*Wills* 497(1).

Pa. 1934. Will providing that, "if any of my children shall die without children, their portion shall revert to the other heirs," and, "if any of my sons should die without natural heirs, his widow shall have his portion while she remains his widow," held to use words "children," "heirs," and "natural heirs" interchangeably.—*Crawford v. Withrow*, 171 A. 894, 314 Pa. 497.—*Wills* 497(1), 506(1).

Wis. 1955. Where first sister of testatrix adopted a daughter more than 20 years before testatrix executed will giving half of estate of testatrix to her brother and half to first sister, and providing that in the case of the death of either brother or first sister, his or her share should go to his or her "natural heirs" as defined in Wisconsin laws of descent and distribution, and at time of execution of will first sister was 58 years old, and no provision was made in will for second sister of testatrix, and both sisters predeceased testatrix, adopted daughter was entitled to take the first sister's share as her "natural heir" rather than the children of the second sister. *St.1953*, §§ 237.01 et seq., 237.04, 318.01 et seq., 322.07(1).—*In re Rhodes' Estate*, 73 N.W.2d 602, 271 Wis. 342.—*Adop* 21; *Wills* 506(5).

NATURAL HEIRS AT LAW

Va. 1947. Under will devising property to testator's nephew to be held in trust for nephew to be invested and interest from the investments to be paid to nephew during nephew's life and at nephew's death the principal to go to nephew's "natural heirs at law", the quoted words meant next of kin of nephew and did not include the nephew's widow where will evidenced an intent to make final and complete disposition to blood kin. *Code* 1919, § 5264.—*Semones v. Cook*, 41 S.E.2d 13, 185 Va. 929.—*Wills* 506(3).

NATURAL HIGH WATER MARK

N.Y.A.D. 2 Dept. 1978. Evidence that lake had been artificially raised to larger surface area and evidence of deeds in plaintiffs' chain of title showing grant to "natural high water mark" made out prima facie case against defendants for their depriving plaintiffs of littoral rights by wrongfully draining lake, in view of issue whether grantor intended to refer to banks of unaltered pond; defendants would be offered opportunity to submit their proofs on such issue. *Real Property Law* § 245.—*Bromberg v. Morton V. Ellish, Inc.*, 407 N.Y.S.2d 584, 64 A.D.2d 684.—*Waters* 114.

NATURAL IMPORT

Ky. 1937. The "natural import" of words is their literal sense, but the natural import may be greatly varied to give effect to the fundamental purpose of a statute.—*Hicks v. Conn*, 109 S.W.2d 811, 270 Ky. 344.—*Statut* 189.

NATURAL INCIDENT OF THE WORK

Me. 1942. An injury to employee as result of assault by fellow employee, whether willfully or sportively, is not "compensable accident" within Workmen's Compensation Act, but when employer knows of occurrence of such assaults in past and fails to prevent their recurrence, so that subsequent injury resulting therefrom may be said to have followed as "natural incident of the work" and to have been such as would have been contemplated by reasonable person, it may be said to have "arisen in the course of and out of the employment" within such act. *Rev.St.* 1930, c. 55, § 1 et seq.—*Petersen's*

Case, 25 A.2d 240, 138 Me. 289.—Work Comp 520, 672, 673, 680.

NATURAL INTERRUPTION

La.App. 2 Cir. 1950. Where defendant claimed ownership of movable property in defendant's possession which was once owned by plaintiff, and owner of a truck delivery service went to defendant at plaintiff's request and stated that plaintiff had sent for the property, and defendant refused to deliver the property on ground that the property belonged to the defendant, such demand and refusal were not deprivation of defendant's possession so as to bring about a "natural interruption" of prescription. LSA—C.C. arts. 3516, 3517.—Rio Hondo Land Co. v. Gibbs, 49 So.2d 76.—Adv Poss 47.

NATURALIZATION

C.C.A.2 (Conn.) 1933. "Naturalization" is the act of adopting a foreigner and clothing him with the privileges of native citizen. Const.Amend. 14; 8 U.S.C.A. §§ 241, 405, and § 392a note.—U. S. v. Harbanuk, 62 F.2d 759.—Aliens 60.2.

D.Conn. 1942. Where a naturalized citizen's re-entry into Italian military service in 1915 repatriated him as an Italian citizen under the Italian law then in effect, such repatriation was "naturalization" within the meaning of the United States Citizenship Act providing that American citizenship should be lost by naturalization of the citizen under the laws of a foreign country. 8 U.S.C.A. 15, Citizenship Act of 1907, Sec. 2, 8 U.S.C.A. 16, 17.—U.S. ex rel. De Cicco v. Longo, 46 F.Supp. 170.—Citiz 16.

E.D.Mich. 1941. "Naturalization" is a "privilege" granted by statutes and not a "right", and there is no obligation upon the government to grant it, and statutory provisions concerning naturalization must be strictly observed. Naturalization Act § 1 et seq., 8 U.S.C.A. § 1443 et seq.—U.S. v. Zgrebec, 38 F.Supp. 127.—Aliens 60.2.

D.Neb. 1960. The term "naturalization" has application broadly to the whole process of the quest and acquisition of citizenship, but chiefly and especially to the final judicial act whereby the applicant is accepted and admitted to the taking of the oath of allegiance. Immigration and Nationality Act, §§ 101(a), 101(a) (39), 316(a) (1), 319(a), 8 U.S.C.A. §§ 1101(a), 1101(a) (39), 1427(a) (1), 1430(a).—Petition for Naturalization of Noland, 185 F.Supp. 948.—Aliens 60.2.

W.D.Pa. 1947. "Naturalization" is the act of adopting a foreigner and clothing him with privilege of a native citizen.—In re Martinez, 73 F.Supp. 101.—Aliens 60.2.

W.D.Wash. 1927. "Naturalization" is act of adopting alien and clothing him with privileges of citizenship. "Naturalization" is the act of adopting an alien and clothing him with the privileges of citizenship.—In re Bishop, 26 F.2d 148.—Aliens 60.

W.D.Wash. 1927. "Naturalization" is act of adopting alien and clothing him with privileges of

citizenship.—In re Bishop, 26 F.2d 148.—Aliens 60.2.

Cal.App. 3 Dist. 1997. "Naturalization" is the process by which person acquires nationality after birth and becomes entitled to privileges of United States citizenship.—People v. Gontiz, 68 Cal. Rptr.2d 786, 58 Cal.App.4th 1309, as modified, and review denied.—Aliens 60.2.

NATURALIZATION PROCEEDINGS

C.C.A.3 (Pa.) 1934. "Naturalization proceedings" are administrative of naturalization laws and constitute inquiry into applicant's fitness for citizenship and particularly his disposition with relation to theory of United States government, 8 U.S.C.A. § 379.—Rein v. U S, 69 F.2d 206.—Aliens 68(1).

NATURALIZED CITIZEN

App.D.C. 1937. Assuming that the son of a naturalized Hawaiian citizen, who was born in Germany and resided there until 1899, was a Hawaiian citizen and became a citizen of the United States under the Hawaiian Organic Act, he was a "naturalized citizen" within statute as to proof to overcome presumption of expatriation by residence abroad by naturalized citizen seeking recovery of property seized by Alien Property Custodian. 8 U.S.C.A. §§ 1481(a), 1482, 1484; 48 U.S.C.A. § 494; Trading with the Enemy Act, § 21, as added by Act March 4, 1923, § 2, 50 U.S.C.A. Appendix § 21.—Cummings v. Isenberg, 89 F.2d 489, 67 App.D.C. 17, certiorari denied 57 S.Ct. 783, 301 U.S. 682, 81 L.Ed. 1341, rehearing denied 57 S.Ct. 921, 301 U.S. 713, 81 L.Ed. 1365.—War 12.

C.C.A.2 (N.Y.) 1941. A native German, who received from Minister of Interior of Republic of Hawaii in 1894 a certificate stating that he was entitled to all privileges of citizenship without thereby prejudicing his native citizenship or allegiance, did not thereby become a "naturalized citizen" of the republic and hence did not acquire United States citizenship under Organic Act granting citizenship to all who were citizens of the Republic on August 12, 1898, so that he was not a citizen but an alien enemy and was not entitled to receive back more than 80 per cent. of proceeds of property seized by Alien Property Custodian. Trading with the Enemy Act §§ 2, 9(a), 50 U.S.C.A. Appendix, §§ 2, 9(a); Act Hawaii June 15, 1896; Const.Hawaii 1894, art. 17, §§ 1, 2, 5; art. 18, §§ 1, 2.—U.S. v. Rodiek, 117 F.2d 588, rehearing denied 120 F.2d 760, certiorari granted 62 S.Ct. 101, 314 U.S. 597, 86 L.Ed. 481, affirmed 62 S.Ct. 793, 315 U.S. 783, 86 L.Ed. 1190, rehearing denied 62 S.Ct. 940, 316 U.S. 707, 86 L.Ed. 1774.—Citiz 5; War 12.

N.Y. 1936. Woman acquiring American citizenship by marriage to naturalized citizen held "naturalized citizen" within statute creating presumption of repatriation after two years' residence in foreign state from which naturalized citizen came, notwithstanding statutory provision for retention by foreign woman, after termination of marriage, of citizenship acquired by marriage. 8 U.S.C.A. §§ 10, 17; Const.U.S.Amend. 14, § 1.—Johansen v. Staten Is-

land Shipbuilding Co., 5 N.E.2d 68, 272 N.Y. 140.—Citiz 7.

NATURALIZED UNDER SWEDISH LAW

U.S.Dist.Col. 1939. Where person born in the United States of naturalized Swedish parents was removed during minority to Sweden by her parents who resumed their Swedish citizenship, person's acquisition of derivative Swedish citizenship did not make her a person who had been "naturalized under Swedish law" within statute providing that any American citizen should be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, and person did not lose her American citizenship through operation of that statute. 8 U.S.C.A. § 17.—*Perkins v. Elg*, 59 S.Ct. 884, 307 U.S. 325, 83 L.Ed. 1320.—Citiz 18.

NATURAL JUSTICE

Mich. 1903. By "natural justice," in the rule that, where one makes a will contrary to natural justice, that fact may be considered with other facts, means that which is founded in equity, honesty, and right, and "natural justice" requires that a parent shall care for his children. The fact that testatrix, 70 years of age, gave the bulk of her property to a public library to the exclusion of her two sisters and her brother living in other cities did not show lack of testamentary capacity; there having been litigation tending to embitter them, and their relations not being intimate.—*Spencer v. Terry's Estate*, 94 N.W. 372, 133 Mich. 39.

N.Y.A.D. 1 Dept. 1963. It was not contrary to "natural justice" or inconsistent with "fair play" for members of committee which had recommended penalty to vote at special meeting of medical society which considered suspended member's appeal from action of committee; and such sufferage at special meeting was authorized by bylaw providing that deliberations of society should be governed by parliamentary usage, as contained in "Robert's Rules of Order, Revised".—*Posner v. Bronx County Medical Soc.*, 241 N.Y.S.2d 540, 19 A.D.2d 89, affirmed 245 N.Y.S.2d 393, 13 N.Y.2d 1004, 195 N.E.2d 59.—*Health 295*; *Parl Law 5*.

NATURAL LAW

N.Y.Sup. 1945. The moral law as promulgated to man by the light of reason is rightly called the "natural law".—*Sodero v. Sodero*, 56 N.Y.S.2d 823.—*Com Law 2.1*.

NATURAL LAY OF LAND

Tex.Civ.App.—Texarkana 1926. Railroad's duty to provide culverts as "natural lay of land" required means at time roadbed was constructed (*Vernon's Sayles' Ann.Civ.St.* 1914, art. 6495 [*Vernon's Ann. Civ.St.* art. 6328]).—*Gulf, C. & S.F. Ry. Co. v. Waller*, 288 S.W. 522, writ refused.—*R R 108*.

NATURAL LIFE

Cal. 1944. Use of word "natural" by Governor in commuting prisoner's death sentence on condi-

tion that he be imprisoned during term of his "natural life", without more, could not be construed as indicating intention that prisoner should not be entitled to privilege of parole law. *Pen. Code*, §§ 671, 1168, 3046.—*Ex parte Stewart*, 149 P.2d 689, 24 Cal.2d 344.—*Pardon 28*.

N.J. 1950. Where testator devised his estate to his children and provided that his children should provide a home and maintenance for his wife for and during her "natural life," if she should so long remain his widow, quoted words did not include expenses which could not possibly rise until after wife's death or embrace funeral expenses.—*Stryker v. Sands*, 72 A.2d 175, 4 N.J. 182.—*Wills 730*.

NATURALLY

W.D.Mo. 1981. As bearing upon Missouri law of respondeat superior, that servant's acts are within scope and course of his employment if done by servant to further business or interest of master under general authority and direction of master and if they naturally arose from performance of servant's work, word "naturally" implies that servant's conduct must be usual, customary and expected, which, in essence, creates requirement of foreseeability.—*Bates v. U. S.*, 517 F.Supp. 1350, affirmed 701 F.2d 737.—*Mast & S 302(1)*.

Ga.App. 1934. Disease results "naturally" and unavoidably from injury, within Compensation Act, when contracted in a way that is natural to the disease. *Laws 1920*, p. 167, § 2 (d), as amended by *Laws 1922*, p. 186, § 1.—*Maryland Cas. Co. v. Brown*, 173 S.E. 925, 48 Ga.App. 822.

Ga.App. 1925. Disease from which employee suffers, to be within Workmen's Compensation Act, must result "naturally" and unavoidably from injury received in course of employment; "naturally" meaning according to the laws of nature, or usual course of things.—*U.S. Cas. Co. v. Smith*, 129 S.E. 880, 34 Ga.App. 363, affirmed 133 S.E. 851, 162 Ga. 130.—*Work Comp 522*.

Md. 1933. For accidental injury to constitute "proximate cause" of employee's death, such result need not be natural, usual, or expected one; such words meaning that result could have been caused by accident and that no other efficient cause intervened. Word "naturally," in *Code Pub.Gen. Laws 1924*, art. 101, § 65, subsec. 6, defining injury and personal injury as accidental injury arising out of and in course of employment and disease or infection naturally resulting therefrom, does not mean "according to the usual course of things" in sense of something to be contemplated or expected; natural and proximate consequences of act including all damages of which such act was efficient cause, though not occurring until some time afterward, and not contemplated or foreseen by wrongdoer.—*Baber v. John C. Knipp & Sons*, 163 A. 862, 164 Md. 55.

Md. 1924. "Naturally," as used in *Code*, art. 101, § 63, subsec. 6, defining injury and personal injury as meaning only accidental injuries arising out of or in course of employment, "and such disease or infection as may naturally result there-

from," is not restricted to reasonable or probable consequences; test being only, did injury arise out of and in course of employment, regardless of whether it was a normal or abnormal occurrence.—*Bramble v. Shields*, 127 A. 44, 146 Md. 494.—*Work Comp* 524.

Mass. 1902. "Naturally," as used in an instruction in an action for injuries caused by falling on an icy sidewalk, due to water from a defective pipe on defendant's premises, that, to entitle plaintiff to recover, there must have been a nuisance on the walk, due to defendant's neglect, which must have been caused by some defect in the pipe, so that water would not naturally be carried off, imports that the result must be one which manifestly would come to pass, according to common experience, if the defect was allowed to remain. A defect in an outside gutter or spout which naturally would produce a nuisance necessarily would be of a certain magnitude, and would be visible on inspection.—*Davis v. Rich*, 62 N.E. 375, 180 Mass. 235.

Ohio 1969. Evidence which is inferior or cumulative to evidence previously introduced is not evidence that a litigant would "naturally" produce within rule that adverse inference may arise where party fails, without satisfactory explanation, to call witness where existence of witness is known to and is in control of litigant whose interest would naturally be served by his production.—*Silveous v. Rensch*, 253 N.E.2d 758, 20 Ohio St.2d 82, 49 O.O.2d 355.—*Evid* 77(1).

Tex.Civ.App.—Amarillo 1935. Term "naturally," within provision in Compensation Law that injury should be construed to mean damage to physical structure of body and such diseases or infections as "naturally" result therefrom, does not mean that disease must be such as usually and ordinarily follows accident, but that injury or damage caused by accident is such that it is natural for disease to follow therefrom, considering human anatomy and structural portions of body in relations to each other. *Vernon's Ann.Civ.St. art. 8309*.—*Maryland Cas. Co. v. Rogers*, 86 S.W.2d 867, writ refused.—*Work Comp* 524.

Tex.Civ.App.—Amarillo 1934. Damages recoverable for breach of contract are such as may fairly and reasonably be considered as arising "naturally" or according to usual course of things, from breach, or such as may reasonably be supposed to have been in contemplation of parties when they made contract as probable result of breach.—*Pittsburgh Athletic Co. v. Malin*, 71 S.W.2d 889, writ dismissed.—*Damag* 22.

Tex.Civ.App.—Beaumont 1935. Definition of "producing cause" as "such as "naturally" resulted in death" of employee given by court in submitting special issue in compensation case as to whether injury received by employee was producing cause of his death held proper. *Vernon's Ann.Civ.St. art. 8306 et seq.*—*Travelers Ins. Co. v. Johnson*, 84 S.W.2d 354, writ dismissed.—*Trial* 232(5).

Vt. 1895. "Naturally," as used in a conveyance of wells supplied by percolating water, and the property on which they are located, in which the

grantor quitclaimed all right and title which he might have in and to what water would naturally flow into the wells, covers the water which the wells will receive when nothing is done to intercept its passage. The natural movement of water is that which will occur if no action is taken to obstruct or divert it.—*Minard v. Currier*, 32 A. 472, 67 Vt. 489.

Va. 1897. In an action to recover the price of fertilizers sold, where the defence is a breach of warranty of the quality of the fertilizer, it is not error to instruct the jury that they are to look to the evidence for proof of the warranty and its breach, and, if established, they must find for the defendant "such damages as have resulted naturally from the breach of the said warranty." "Naturally" here means legitimately, and the instruction leaves it to the jury to determine from the evidence the amount of such damages.—*Reese v. Bates*, 26 S.E. 865, 94 Va. 321.—*Sales* 446(9).

Va. 1897. An instruction that the jury should find for defendant such damages as have resulted naturally from the breach of the warranty is not erroneous in using the word "naturally."—*Reese v. Bates*, 26 S.E. 865, 94 Va. 321.—*Damag* 218.

Va. 1897. "Naturally," as used in an instruction authorizing the recovery of "such damages as have resulted naturally from the breach" of the warranty, is but the equivalent of "legitimately," "normally," or, in other words, embraces such damages as are the natural—that is to say, the legitimate, normal—result consequent upon the breach of the warranty.—*Reese v. Bates*, 26 S.E. 865, 94 Va. 321.

Wash.App. Div. 1 1996. To establish that disease arose "naturally" out of employment, individual seeking workers' compensation or police disability pension benefits must establish that his or her occupational disease came about as matter of course as natural consequence or incident of distinctive conditions of his or her particular employment. *West's RCWA* 41.26.120, 51.32.180.—*Dillon v. Seattle Police Pension Bd.*, 916 P.2d 956, 82 Wash.App. 168.—*Mun Corp* 187(5); *Work Comp* 548.

Wash.App. Div. 1 1986. "Naturally," for purposes of workers' compensation statute providing that occupational disease means such disease or infection as arises naturally and proximately out of employment, means that claimant must show logical relationship of disease-based disability to work or its attendant conditions; declining to follow *Department of Labor & Indus. v. Kinville*, 35 Wash. App. 80, 664 P.2d 1311. *West's RCWA* 51.08.140.—*Dennis v. Department of Labor and Industries*, 722 P.2d 1317, 44 Wash.App. 423, review granted 107 Wash.2d 1001, affirmed 745 P.2d 1295, 109 Wash.2d 467.—*Work Comp* 1364.

Wash.App. Div. 2 1996. To establish that disease arose "naturally" out of employment, individual seeking police disability pension benefits must establish that his or her occupational disease came about as matter of course as natural consequence or incident of distinctive conditions of his or her particular employment. *West's RCWA* 41.26.120, 41.26.125.—*Woldrich v. Vancouver Police Pension*

Bd., 928 P.2d 423, 84 Wash.App. 387.—Mun Corp 187(5).

Wash.App. Div. 2 1996. For individual seeking police disability pension benefits to establish that disease arose “naturally” out of employment, conditions need not be peculiar to, nor unique to particular employment. West’s RCWA 41.26.120, 41.26.125.—Woldrich v. Vancouver Police Pension Bd., 928 P.2d 423, 84 Wash.App. 387.—Mun Corp 187(5).

Wash.App. Div. 2 1996. Focus, in establishing whether occupational disease suffered by individual seeking police disability pension benefits arose “naturally” out of employment, is upon conditions giving rise to disease, or disease-based disability resulting from work-related aggravation of a non-work-related disease, and not upon whether disease itself is common to that particular employment. West’s RCWA 41.26.120, 41.26.125.—Woldrich v. Vancouver Police Pension Bd., 928 P.2d 423, 84 Wash.App. 387.—Mun Corp 187(5).

Wash.App. Div. 2 1996. To satisfy requirement that occupational disease arose “naturally” out of employment, individual seeking police disability pension benefits must show that his or her particular work conditions more probably caused his or her disease or disease-based disability than conditions in everyday life or all employments in general. West’s RCWA 41.26.120, 41.26.125.—Woldrich v. Vancouver Police Pension Bd., 928 P.2d 423, 84 Wash.App. 387.—Mun Corp 187(5).

Wash.App. Div. 2 1996. For individual seeking police disability pension benefits to prove that occupational disease occurred “naturally,” conditions causing disease or disease-based disability must be conditions of employment, that is, conditions of worker’s particular occupation as opposed to conditions coincidentally occurring in his or her workplace. West’s RCWA 41.26.120, 41.26.125.—Woldrich v. Vancouver Police Pension Bd., 928 P.2d 423, 84 Wash.App. 387.—Mun Corp 187(5).

Wash.App. Div. 2 1989. Requirement of occupational disease statute that disabling disease have arisen “naturally” out of employment in order to be compensable addresses the work-connection requirement, while requirement that the occupation be the “proximate cause” of the disease is addressed by a but for test. West’s RCWA 51.08.140.—City of Bremerton v. Shreeve, 777 P.2d 568, 55 Wash.App. 334.—Work Comp 547.

NATURALLY AND PROXIMATELY

Wash.App. Div. 2 1983. Requirement that a compensable occupational disease arise “naturally and proximately” out of a claimant’s employment limits compensation to diseases which are inherent in a claimant’s particular occupation. West’s RCWA 51.08.140.—Department of Labor & Industries v. Kinville, 664 P.2d 1311, 35 Wash.App. 80.—Work Comp 548.

NATURALLY AND UNAVOIDABLY

Va. 1939. Where employee sustained fracture of pelvis, which was a compensable injury, requiring hospitalization, employee’s death resulting ten days after the accident, from acute lobar pneumonia which developed within five days after accident and within three days from date of administration of ether, which was necessary in order to attempt reduction of the fracture, was compensable as resulting “naturally and unavoidably” from the compensable injury.—Justice v. Panther Coal Co., 2 S.E.2d 333, 173 Va. 1.—Work Comp 600.

NATURALLY AND UNAVOIDABLY RESULT

N.Y.A.D. 3 Dept. 1917. Under Workmen’s Compensation Act, Consol.Laws, c. 67, § 3, subd. 7, defining “injury” and “personal injury” to mean only accidental injuries arising out of and in the course of employment and such disease as may result therefrom, the driver of a bakery wagon, who accidentally slipped in getting off his wagon and fell, and received a spiral fracture of the right tibia arising out of and in the course of his employment, the healing of which was prolonged by reason of his preexisting syphilitic condition, which, aggravated by the accident, resulted in the loss of sight, while he might be entitled to compensation for the fracture, was not entitled to compensation for a permanent physical disability due to the loss of his sight, as that did not “naturally and unavoidably result” from the accident.—Borgsted v. Shults Bread Co., 167 N.Y.S. 647, 180 A.D. 229.

NATURALLY IMPOTENT

Fla.App. 2 Dist. 1957. The term “naturally impotent” as statutory ground for divorce means lack of capacity to copulate existing at time of marriage, regardless of whether condition arose through act of nature, accident, fault of another or through fault of individual himself, and it is unnecessary that impotency shall have existed from birth. F.S.A. § 65.04(2).—Cott v. Cott, 98 So.2d 379, 65 A.L.R.2d 774.—Divorce 16.

Ill. 1896. Wife is entitled to divorce for impotency of husband at time of marriage caused by self-abuse, where he has become so perverted as to deprive himself of desire and ability to perform the act of coition and he is incurable. “Naturally impotent” under S.H.A. ch. 40, § 1, means incurably impotent, whether from defect caused by nature or from accident, or by acts of party.—Griffith v. Griffith, 44 N.E. 820, 162 Ill. 368.—Divorce 16.

NATURALLY RESULTS

Md. 1924. “Naturally results,” as used in definition of “injury” contained in Workmen’s Compensation Act, is not limited to results arising in usual course of things, but includes consequences proximately resulting, whether unusual or unexpected.—Dickson Const. & Repair Co. v. Beasley, 126 A. 907, 146 Md. 568.—Work Comp 597.

NATURAL MARKETING AREA

Vt. 1939. That Milk Control Act authorized Milk Control Board to designate "natural marketing areas" in fixing milk prices does not render act unconstitutional as delegating legislative power to board, judicial notice being taken that a "natural marketing area" is a region within which milk is ordinarily sold in response to commercial demand. Laws 1937, No. 99, §§ 2, 5, 7; Const. c. 2, §§ 2, 5, 6.—*State v. Auclair*, 4 A.2d 107, 110 Vt. 147.—Const Law 62(6); Food 1.9(2).

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NATURAL MILK SHED

Conn. 1942. Milk producer in New York whose milk could be preserved and transported to Connecticut in time to be usable as fresh milk was within the "natural milk shed" of Connecticut, as defined by statute providing for the regulation and equipment of dairies within the natural milk shed of Connecticut producing fresh milk for the daily use in Connecticut. Gen.St.Supp.1941, § 431f (Rev.

1949, § 3217).—*Bryant & Chapman Co. v. Lowell*, 27 A.2d 637, 129 Conn. 321.—Food 5.

NATURAL MONOPOLY

C.A.D.C. 1996. For purposes of natural gas industry, "natural monopoly" occurs when, because of high ratio of fixed costs to variable costs, single firm has declining average costs at level of demand in the industry, such that single firm can supply service more cheaply than two firms could.—*United Distribution Companies v. F.E.R.C.*, 88 F.3d 1105, 319 U.S.App.D.C. 42, opinion after remand from Court of Appeals Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 1997 WL 81264, on rehearing 1998 WL 327106, certiorari denied Associated Gas Distributors v. F.E.R.C., 117 S.Ct. 1723, 520 U.S. 1224, 137 L.Ed.2d 845, certiorari d—Monop 12(1.3).

C.A.8 (Mo.) 1985. "Natural monopoly" is a market that can practically accommodate only one competitor, and it cannot be a violation of law to be that one competitor, so long as the company in question has attained its success in the market by business acumen, superior quality, or other means honestly industrial. *Sherman Anti-Trust Act*, § 2, as amended, 15 U.S.C.A. § 2.—*National Reporting Co. v. Alderson Reporting Co., Inc.*, 763 F.2d 1020.—Monop 12(1.3).

S.D.Miss. 1997. Any monopoly formed when only two urologists in county started practicing together in merged physician clinics was "natural monopoly," where population of county was only large enough to support two urologists, and urologists wished to practice together so that they could cover each other. *Clayton Act*, § 7, 15 U.S.C.A. § 18.—*HTI Health Services, Inc. v. Quorum Health Group, Inc.*, 960 F.Supp. 1104.—Monop 12(11).

S.D.Miss. 1997. "Natural monopoly" is market that can practically accommodate only one competitor. *Clayton Act*, § 7, 15 U.S.C.A. § 18.—*HTI Health Services, Inc. v. Quorum Health Group, Inc.*, 960 F.Supp. 1104.—Monop 12(1.3).

S.D.N.Y. 1969. A "natural monopoly" is one resulting where one firm of efficient size can produce all or more than market can take at remunerative price. *Sherman Anti-Trust Act*, § 2, 15 U.S.C.A. § 2.—*Ovitron Corp. v. General Motors Corp.*, 295 F.Supp. 373.—Monop 12(1.3).

NATURAL MONUMENT

D.Md. 1967. Southeast corner of grantor's property could properly be classed as a "natural monument" where it was formed by known and established boundary lines.—*U.S. v. Gallas*, 269 F.Supp. 141.—Bound 4.

Wis. 1908. Where by the original government survey and plat a tract of land appears to have as its boundary a body of water, such body of water is a "natural monument," and will constitute the boundary, however distant or variant from the position

indicated for it by the meander line, and will control as a call of the survey over either distances or quantity of land designated.—*Brown v. Dunn*, 115 N.W. 1097, 135 Wis. 374.—Bound 3(4).

Wis. 1908. The limitation on the rule that a body of water appearing on the original government survey and plat as the boundary of a tract of land is a "natural monument," and will constitute the boundary, however distant from the position indicated for it by the meander line, and that, where the meander line is drawn on one side of one of the regular survey lines, the one-quarter line, or the one-sixteenth line, the boundaries cannot be extended across such line to reach the water front, especially if such survey line appears on the government plat as a boundary of a lot conveyed to another, is inapplicable, where, though in some places the meander line falls south of the east and west one-sixteenth line and west of the north and south one-sixteenth line, yet at other points is located north of the one and east of the other, thus conclusively refuting the inference that the government intended that the lot line should be confined within either of such one-sixteenth lines.—*Brown v. Dunn*, 115 N.W. 1097, 135 Wis. 374.—Bound 13.

NATURAL MONUMENTS

Colo. 1959. Under federal statute providing that record of placer mining claim shall, among other things, contain "such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim", official United States surveys are such "natural monuments," and a private survey on unsurveyed lands, which is tied to a nearby public survey, is a sufficient reference to a "permanent monument" to comply with the statute. 30 U.S.C.A. § 28.—*McNulty v. Kelly*, 346 P.2d 585, 141 Colo. 23.—*Mines* 22.

Mo.App. 1978. Although they may lose their distinctive character as such by removal, change or displacement, "natural monuments" are fixed, visible objects found on land as they were put there by nature; "natural monuments" can be rocks, trees, springs, streams and sloughs.—*Prichard v. Hink*, 574 S.W.2d 30.—Bound 4.

Mo.App. 1975. Monuments are among the more important indicia of boundaries, and are classified as "natural monuments," which are permanent objects found on the land as they were placed by nature, or "artificial monuments," which are landmarks or signs erected by the hand of man.—*Czarnecki v. Phillips Pipe Line Co.*, 524 S.W.2d 153.—Bound 3(3), 4, 5.

Pa. 1914. "Natural monuments" are objects permanent in character which are found on the land as they were placed by nature.—*Miles Land Co. v. Hudson Coal Co.*, 91 A. 1061, 246 Pa. 11.—Bound 4.

Wis. 1929. "Natural monuments" are objects permanent in character found on land as placed by nature.—*Timme v. Squires*, 225 N.W. 825, 199 Wis. 178.—Bound 4.

Wyo. 1983. "Monument" is natural or artificial physical object on ground which helps to establish line; "natural monuments" are such things as trees, rivers, stone outcroppings, creeks, and land features; "artificial monuments" are such things as fences, stakes, roads, and things placed by human hand.—*Sowerwine v. Nielson*, 671 P.2d 295.—Bound 4, 5.

NATURAL MOTHER

Cal. 1993. Although Uniform Parentage Act recognizes both genetic consanguinity and giving birth as means of establishing mother and child relationship, when the two means do not coincide in one woman, she who intended to procreate child—that is, she who intended to bring about birth of child that she intended to raise as her own—is "natural mother." West's Ann.Cal.Civ. Code §§ 7000–7021.—*Johnson v. Calvert*, 851 P.2d 776, 19 Cal.Rptr.2d 494, 5 Cal.4th 84, certiorari denied 114 S.Ct. 206, 510 U.S. 874, 126 L.Ed.2d 163, certiorari dismissed *Baby Boy J. v. Johnson*, 114 S.Ct. 374, 510 U.S. 938, 126 L.Ed.2d 324.—Parent & C 1.

Cal. 1993. In true "egg donation" situation, where woman gestates and gives birth to child formed from egg of another woman with intent to raise that child as her own, birth mother is "natural mother." West's Ann.Cal.Civ.Code §§ 7000–7021.—*Johnson v. Calvert*, 851 P.2d 776, 19 Cal.Rptr.2d 494, 5 Cal.4th 84, certiorari denied 114 S.Ct. 206, 510 U.S. 874, 126 L.Ed.2d 163, certiorari dismissed *Baby Boy J. v. Johnson*, 114 S.Ct. 374, 510 U.S. 938, 126 L.Ed.2d 324.—Parent & C 1.

N.Y.A.D. 2 Dept. 1994. Mother who did not provide eggs in in-vitro fertilization procedure that resulted in birth of twins was "parent" i.e., "natural mother," of children for purposes of custody dispute; where woman gestates and gives birth to child formed from egg of another woman with intent to raise child as her own, birth mother is natural mother for custody purposes.—*McDonald v. McDonald*, 608 N.Y.S.2d 477, 196 A.D.2d 7.—Child 1; Parent & C 1.

NATURAL NEIGHBORHOODS

Wash. 1982. Term "natural neighborhoods" not being defined in statute, stating objectives of county boundary review board, court in absence of legislative direction would construe term to mean both distinct geographical areas or socially and locationally distinct groups of residents, under general rule that remedial statutes are to be liberally construed. West's RCWA 36.93.180.—*Spokane County Fire Protection Dist. No. 9 v. Spokane County Boundary Review Bd.*, 652 P.2d 1356, 97 Wash.2d 922.—Mun Corp 25.

NATURAL OBJECT

Colo. 1985. "Natural object" is not unconstitutionally vague as used in presumption contained in C.R.S. 33–44–109(2) that responsibility for collisions by skiers with any person, natural object or manmade structure marked in accordance with stat-

utory requirements lies solely with skier or skiers involved and not with ski area operator unless contrary is shown by preponderance of evidence.—*Pizza v. Wolf Creek Ski Development Corp.*, 711 P.2d 671, 55 A.L.R.4th 607.—*Theaters 2.*

Colo. 1885. Under Rev.St.U.S. § 2324 (30 U.S.C.A. § 28), requiring a reference to some “natural object” in the recorded description of a mining claim, a tree is such an object if it is marked or possesses peculiarities by which it can be designated.—*Quimby v. Boyd*, 6 P. 462, 8 Colo. 194, rehearing denied 7 P. 288, 8 Colo. 342, appeal dismissed 9 S.Ct. 147, 128 U.S. 488, 32 L.Ed. 502.—*Mines 21(1).*

Idaho 1919. The junction of two creeks is a “natural object” within C.L. § 3222.—*Independence Placer Mining Co. v. Knauss*, 181 P. 701, 32 Idaho 269.

Mont.Terr. 1889. “Natural object,” as used in Rev.St.U.S. § 2324, 30 U.S.C.A. § 28, requiring that all records and mining claims shall contain such a description of the claim or claims, located by reference to some natural object or permanent monument, as will identify the claim, may include either a large boulder, or a well-known patented claim.—*Gamer v. Glenn*, 20 P. 654, 8 Mont. 371.

Mont.Terr. 1888. “Natural object,” as used in the federal and territorial laws requiring the location of a mining claim to be made with reference to some natural object, is any permanent feature in the landscape. A cañon is as much a natural object in the landscape as the mountains which lie on either side of it, or a river or a plain.—*Flavin v. Mattingly*, 19 P. 384, 8 Mont. 242.

N.C. 1958. In a description of property, a known line of another tract is a “natural object” which will control course or distance, and a ditch or a road is a natural object.—*Franklin v. Faulkner*, 104 S.E.2d 841, 248 N.C. 656.—*Bound 3(4), 3(7).*

N.C. 1916. In determining a boundary, natural objects called for and properly identified will control course and distance, and the line of another tract, when fixed or capable of being fixed, is to be considered a “natural object.”—*Gray v. Coleman*, 88 S.E. 489, 171 N.C. 344.

Okla. 1995. “Natural object” of testator’s bounty is one related to him by consanguinity.—*Matter of Estate of Maheras*, 897 P.2d 268, 1995 OK 40, rehearing denied.—*Wills 9.*

Tex.Civ.App.—San Antonio 1943. Where field notes of survey placed one corner of tract on bluff bank and evidence disclosed that bank was not on bay shore, call for bluff bank was call for “natural object” and was controlling, thereby precluding construction of field notes so as to indicate intent to place survey or corner thereof on bay.—*State v. Arnim*, 173 S.W.2d 503, writ refused w.o.m.—*Bound 3(3).*

NATURAL OBJECT OF TESTATOR’S BOUNTY

Conn. 1928. “Natural object of testator’s bounty,” as that term is used in testamentary law, com-

prises whoever would take in the absence of a will, because they are the persons whom the law has so designated, and in the ordinary case the law follows the normal condition of near relationship.—*Page v. Phelps*, 143 A. 890, 108 Conn. 572.

La.App. 3 Cir. 1997. Either spouse or child is clearly “natural object of testator’s bounty.” (Per Saunders, J., with one Judge concurring in the result and one Judge concurring with assigned reasons.)—*Succession of Reeves*, 704 So.2d 252, 1997-20 (La.App. 3 Cir. 10/29/97), rehearing denied, writ granted 805 So.2d 185, 1998-0581 (La. 5/1/98).—*Wills 50.*

NATURAL OBJECTS

Ind.App. 1940. Generally, in interpreting boundaries of lands, resort must be had first to natural objects or landmarks, next to artificial monuments, then to adjacent boundaries, and thereafter to courses and distances, “natural objects” including mountains, lakes, rivers, etc., and “artificial monuments” consisting of marked lines, stakes, and similar matters marked or placed on ground by the hand of man, and, whenever a natural object is distinctly called for and satisfactorily proved, it becomes a landmark to which preference must be given because certainty which it affords excludes probability of mistake.—*Earhart v. Rosenwinkel*, 25 N.E.2d 268, 108 Ind.App. 281.—*Bound 3(1), 3(3).*

N.M.Terr. 1884. “Natural objects,” as used in the Revised Statutes of the United States, requiring that all records of mining claims shall contain a description of the claim or claims, located by reference to some natural objects or permanent monuments that will identify the claims, means such objects as will enable a person endeavoring to locate a claim to correctly make a survey of it by means of the reference made to such natural objects or permanent monuments.—*Baxter Mountain Gold Min. Co. v. Patterson*, 3 P. 741, 3 N.M. 269, 3 Gild. 269, 3 Johnson 179.

Wash. 1926. The words “natural objects” and “permanent monuments” are general terms, susceptible of different shades of meaning depending largely upon their application. What might be regarded as a permanent monument for one purpose might not be so considered with reference to a different purpose. The same rule applies to natural objects. There is no particular necessity for drawing a distinction between natural objects such as streams, rivers, ponds, highways, trees, and other things, ejusdem generis, and permanent monuments which may imply an element of artificial construction, it being the manifest intent of the law that any object of a fairly permanent character, whether natural or artificial, may, if sufficiently prominent, serve for the purpose of reference and identification. As to whether a given notice or certificate of location contains such a description of the claim as located by reference to some natural object or permanent monument as will identify it, is a question of fact to be determined by the jury, and parol evidence is admissible for the purpose of proving that the thing named in the certificate is, in fact, a natural object or permanent monument. In the

absence of evidence for or against the sufficiency of the reference in the notice, it will be presumed to be sufficient to identify the claim. The following cases indicate the views of the courts as to what are natural objects or permanent monuments: Prominent posts, or stakes, firmly planted in the ground; stones, if the proper size and properly marked; monuments, prospect holes, and shafts, a deposit and cliff of rocks, may be sufficient as permanent monuments within the meaning of the law. The boundary lines of well known claims have uniformly been held to be such, whether patented or not. Description of mining claim in location notice as "bordered on north end by Camp Creek and joins Gold Eagle claim on south," is sufficient description with reference to natural objects and permanent monuments within Rem.Com.Stat. § 8622.—*Ninemire v. Nelson*, 249 P. 990, 140 Wash. 511.

NATURAL OBJECTS OF BOUNTY

Cal.App. 4 Dist. 1938. Nephews are not necessarily the "natural objects of bounty" of an aunt, as regards question whether will bequeathing property to legatees who were not related by blood to testatrix was unnatural so as to create inference that will was procured by undue influence.—*In re Jacobs' Estate*, 76 P.2d 128, 24 Cal.App.2d 649.—*Wills* 163(6).

N.D. 1954. Nephews and nieces, brothers, sisters, and other collateral heirs are not, because of such relationship alone, "natural objects of bounty" as that term is used in the interpretation of wills.—*Stormon v. Weiss*, 65 N.W.2d 475.—*Wills* 82.

NATURAL OBJECTS OF HER BOUNTY

Wash. 1930. Husband's collateral kin were not "heirs" of wife under statutes of descent, nor "natural objects of her bounty" under law of wills.—*Hutton v. Gonser*, 292 P. 743, 159 Wash. 219.—*Des & Dist* 21; *Wills* 452.

NATURAL OBJECTS OF HIS BOUNTY

N.Y.Sur. 1912. If a person has sufficient capacity to comprehend perfectly the condition of his property, his relations to the persons who would or should or might be the objects of his bounty, and the scope and power of the provisions of his will, he has testamentary capacity; the term "natural objects of his bounty" does not mean that he should know and recognize every distant relative who is entitled to inherit from him under the existing canons of descent, and does not include cousins to the second and remoter degrees of propinquity, but refers to his near relatives.—*In re Campbell's Will*, 136 N.Y.S. 1086.

NATURAL OBJECTS OF TESTATOR'S BOUNTY

Cal.App. 1 Dist. 1938. The "natural objects of testator's bounty" are his descendants, surviving spouse and parents, and his nephews, nieces, brothers, sisters, and other collateral heirs are not natural or normal objects of his bounty because of such relationship alone.—*In re Nolan's Estate*, 78 P.2d 456, 25 Cal.App.2d 738.

Conn. 1928. Persons with whom testator made his home and was on terms of intimacy and affection, and who had cared for him and made sacrifices for him, which he had reason to and did appreciate, were not "natural objects of testator's bounty" within meaning of law limiting such term to those who would take in the absence of a will.—*Page v. Phelps*, 143 A. 890, 108 Conn. 572.

Mo. 1949. Ordinarily the "natural objects of testator's bounty" are those who, in absence of will, would inherit his property, but question of who comes within range of testator's bounty depends largely upon the circumstances surrounding testator.—*Norris v. Bristow*, 219 S.W.2d 367, 358 Mo. 1177, 11 A.L.R.2d 725.

Or. 1953. The phrase "natural objects of testator's bounty" is no more, no less, than a euphemistic way of defining "next of kin" or those who would take in absence of a will.—*In re Hill's Estate*, 256 P.2d 735, 198 Or. 307.

NATURAL OBLIGATION

W.D.La. 1994. Under Louisiana law, credit that limestone shipper granted to consignee after improperly unloaded limestone slid into water and was rendered useless was "natural obligation" that could not be recovered by shipper, even though consignee did not comply with contract's requirement of timely written notice of materials that did not conform to specifications; however, natural obligation extended only to sum necessary to replace stone loss, and consignee was obligated to return remainder of credit. LSA-C.C. art. 1761.—*Vulcan Materials Co. v. Vulica Shipping Co., Ltd.*, 859 F.Supp. 242.—*Sales* 179(6), 418(7).

La.App. 2 Cir. 1994. Issue of whether "natural obligation" arises from particular situation is raised only after person has voluntarily rendered performance or has promised to perform.—*Thomas v. Bryant*, 639 So.2d 378, 25,855 (La.App. 2 Cir. 6/22/94).—*Contracts* 76.

La.App. 2 Cir. 1932. City's claim for paving, invalid as lien because not timely filed held "natural obligation," precluding recovery of sum voluntarily paid on claim. LSA-C.C. arts. 1758, 1759.—*Cook v. City of Shreveport*, 144 So. 145.—*Mun Corp* 523(2).

La.App. 3 Cir. 1986. Duty, if any, of parent to provide college education to major child, was not "natural obligation" creating right of action, and therefore, it had no legal operation. LSA-C.C. arts. 1757, 1758, 1893, 1896 (Repealed).—*Litel v. Litel*, 490 So.2d 741.—*Child* S 119.

La.App. 4 Cir. 1972. Making of obligation to subcontractor is solely responsibility of general contractor and does not come within definition of "natural obligation" which is binding on party who makes it. LSA-C.C. art. 1757, subd. 2.—*Dobbs Houses, Inc. v. Hastings*, 265 So.2d 294.—*Contracts* 189.

La.App.Orleans 1943. A "natural obligation" was imposed by conscience and natural justice on one borrowing money from small loan company to

repay amount actually received, so as to preclude his recovery back of amounts paid on loans by him, though loan contracts were void and unenforceable as usurious. LSA-C.C. art. 1757, subd. 2; art. 1758, subds. 1-4; art. 1759, subd. 1; arts. 2302, 2303; LSA-R.S. 6:583 Note.—Commonwealth Finance Co. v. Livingston, 12 So.2d 44.—Cons Cred 17.

La.App.Orleans 1943. The statutory provision that “natural obligation,” precluding suit to recover amount paid in compliance therewith, is an obligation rendered invalid by law for want of certain forms or some reason of general policy, but not immoral or unjust in itself, means that natural obligation exists where original obligation from which it springs is invalid, not as *malum in se*, but only because law has declared it unenforceable on ground of public policy. LSA-C.C. art. 1758, subd. 1.—Commonwealth Finance Co. v. Livingston, 12 So.2d 44.—Paymt 82(1).

NATURAL OBLIGATIONS

La.App. 1 Cir. 1976. The unenforceable obligation of an indigent to pay for the fair cost of medical services rendered to him by a hospital while either private or state supported, falls within the definition of “natural obligations.” LSA-R.S. 46:1 et seq., 46:6-46:11; LSA-C.C. arts. 1757-1759.—Muse v. St. Paul Fire & Marine Ins. Co., 328 So.2d 698.—Health 258, 943.

NATURAL OR INCURABLE IMPOTENCY

Tex.Civ.App.—Austin 1956. “Natural or incurable impotency” have the same meaning as used in statute providing for dissolution of marriage on such ground, except perhaps as to origin, and to constitute “impotency” the incapacity must be incurable. Vernon’s Ann.Civ.St. art. 4628.—Cofer v. Cofer, 287 S.W.2d 212, ref. n.r.e.—Marriage 58(2).

NATURAL OUTLET

Wash. 1921. In a suit to cancel assessments levied on plaintiff’s lands by defendant board of commissioners of a county pursuant to Donohue Road Law, as amended by Laws 1917, p. 238, and Laws 1919, p. 298, findings of fact and conclusions of law made by the trial court held insufficient to set aside the assessments against plaintiff’s lands on the ground they were not specially benefited, within the meaning of the Constitution and statutes as having no “natural outlet” in whole or in part from the improved highway; “natural outlet” meaning a means of egress likely and natural.—James v. McMillan, 196 P. 881, 115 Wash. 159.—High 148.

NATURAL OYSTER BED

Md. 1915. In proceedings, under Acts 1914, c. 265, to have declared natural oyster beds and subject to condemnation certain beds previously leased to a private individual as barren, where it was proposed to prove that portions of the ground had been held for private oyster culture under licenses, since forfeited, some years before, such evidence was improperly excluded, it being material to the issues, under the definition of the act that a “natu-

ral oyster bed” is one where a natural growth of oysters was so abundant that the public successfully resorted to it during any oyster season within five years to take oysters as a means of livelihood, as tending to show that the growth of oysters on the bottom sought to be condemned had not been natural, but was the result of artificial cultivation.—Board of Shellfish Com’rs of Maryland v. Mansfield, 94 A. 207, 125 Md. 630.

NATURAL OYSTER REEF

Ala.Civ.App. 1992. There was insufficient evidence that oysters grew in bay in statutorily required “quantity sufficient to warrant fishing for them with hand tongs as a means of a livelihood within a period of five years * * *” to support finding that entire bay was “natural oyster reef,” despite testimony of witnesses that inability to oyster in bay in bad weather affected their ability to earn livelihood. Code 1975, §§ 9-12-21 to 9-12-23.—Kuppersmith v. South Alabama Seafood Ass’n, 627 So.2d 401, affirmed in part, reversed in part Ex parte South Alabama Seafood Ass’n, 627 So.2d 406, on remand 627 So.2d 407.—Fish 7(1).

NATURAL OYSTER REEFS

Ala.Civ.App. 1992. Lease of oyster reefs was unenforceable in light of credible evidence that lessor, lessee and their predecessors did not create culture grounds for growth of oysters, so as to render reefs artificial, rather than “natural oyster reefs,” which are not subject to private leasing. Code 1975, §§ 9-12-21 to 9-12-23.—Kuppersmith v. South Alabama Seafood Ass’n, 627 So.2d 401, affirmed in part, reversed in part Ex parte South Alabama Seafood Ass’n, 627 So.2d 406, on remand 627 So.2d 407.—Fish 7(1).

NATURAL PARENT

N.D.Iowa 1994. The term “natural parent,” as used in Iowa administrative rule making natural parent of dependent child eligible for Aid to Families With Dependent-Unemployed Parent (AFDC-UP) benefits, refers to biological parent. Social Security Act, § 407, as amended, 42 U.S.C.A. § 607; 45 C.F.R. § 233.90; 441 Iowa Admin. Code r. 441.41.8(1)a.(2).—Jenkins v. Palmer, 902 F.Supp. 180, affirmed in part, vacated in part 62 F.3d 1083.—Social S 194.2.

D.C. 1997. Adoptive father became “natural parent” of children adopted by himself and his wife at time of adoption. D.C.Code 1981, § 16-312; Code, Estates and Trusts, § 1-207(a).—A.J. v. L.O., 697 A.2d 1189.—Adop 20.

Minn. 1963. Within Juvenile Court Act and adoption laws, “natural parent” includes the acknowledged father of illegitimate child. M.S.A. §§ 259.21, subd. 3, 260.015, subd. 11.—In re Zink, 119 N.W.2d 731, 264 Minn. 500.—Adop 3; Infants 131.

Ohio Com.Pl. 1994. “Natural parent” refers to child and parent being of same blood or related by blood or genetics.—Belsito v. Clark, 644 N.E.2d 760, 67 Ohio Misc.2d 54.—Parent & C 1.

NATURAL PARENTS

App.D.C. 1946. "Natural parents" within adoption statute includes the father of an illegitimate child, particularly in view of provision therein specifying circumstances under which consent of father need not be secured. D.C.Code 1940, §§ 16-201, 16-202.—*In re Adoption of a Minor*, 155 F.2d 870, 81 U.S.App.D.C. 138.—Adop 7.2(3).

Wis. 1881. "Parents," as used in statutes relating to the descent and distribution of estates of adopted children, should be construed to mean "natural parents," and not to include the adopted parents.—*Hole v. Robbins*, 10 N.W. 617, 53 Wis. 514.

NATURAL PERSON

C.C.A.2 (N.Y.) 1939. "Natural person" within Bankruptcy Act provision that any "natural person" with specified exceptions, as well as certain corporations, may be adjudged an involuntary bankrupt, does not exclude one who has been adjudged a lunatic, but is used merely as a contrast with "person" as elsewhere used to include both individuals and corporations, the adjective "natural" being introduced to exclude artificial persons. *Bankr. Act* §§ 1, sub. 23, 4, 11 U.S.C.A. §§ 1, sub. 23, 22.—*In re Evanishyn*, 107 F.2d 742, 125 A.L.R. 1290.—*Bankr* 2222.1.

C.C.A.2 (N.Y.) 1939. The provision in Bankruptcy Act that any "natural person," with specified exceptions, as well as certain corporations, may be adjudged an involuntary bankrupt would be given its ordinary significance. *Bankr. Act* § 4, sub. b, 11 U.S.C.A. § 22, sub. b.—*In re Evanishyn*, 107 F.2d 742, 125 A.L.R. 1290.—*Bankr* 2222.1.

C.C.A.2 (N.Y.) 1939. Under Bankruptcy Act provision that any "natural person," with specified exceptions, as well as certain corporations, may be adjudged an involuntary bankrupt, one who was sane enough to commit an act of bankruptcy may be adjudged an involuntary bankrupt, though he be overtaken by insanity before petition is filed against him. *Bankr. Act* § 4, sub. b, 11 U.S.C.A. § 22, sub. b.—*In re Evanishyn*, 107 F.2d 742, 125 A.L.R. 1290.—*Bankr* 2222.1.

E.D.Pa. 1990. Under Pennsylvania law as predicted by federal district court, nonviable fetus is not a "natural person" for purposes of wrongful death action. 1 Pa.C.S.A. § 1991; 42 Pa.C.S.A. § 8301.—*Akl v. Listwa*, 741 F.Supp. 555.—*Death* 15.

Conn. 1992. For purpose of statute protecting certain property from postjudgment remedies, and therefore from prejudgment attachment, "natural person" means human being, and not artificial or juristic person. C.G.S.A. § 52-352b.—*Shawmut Bank, N.A. v. Valley Farms*, 610 A.2d 652, 222 Conn. 361, certiorari dismissed 113 S.Ct. 28, 505 U.S. 1247, 120 L.Ed.2d 952.—*Attach* 16.

Del.Super. 1998. Limited partnership that owned apartment complex that used allegedly defective polybutylene pipes in its plumbing system was not a "natural person," and, therefore, lacked

standing to bring breach of warranty claim against supplier of resin used to manufacture the pipes, as a third-party beneficiary. 6 Del.C. § 2-318.—*S&R Associates, L.P. v. Shell Oil Co.*, 725 A.2d 431.—*Contracts* 187(1).

Fla. 1988. "Natural person," as used in Florida constitutional amendment describing persons qualified for homestead exemption, when applied to single persons, does not mean only widows and divorced parents, but makes homestead protection available to any natural person. West's F.S.A. Const. Art. 10, § 4.—*Public Health Trust of Dade County v. Lopez*, 531 So.2d 946.—*Home* 16.

N.Y.Sup. 1979. Employee-user of goods purchased by employer is a "natural person" within the meaning of the statute which provides that a seller's warranty extends to any "natural person" who is in the family or household of the buyer if it is reasonable to expect that such person may use, consume or be affected by the goods. Uniform Commercial Code, § 2-318.—*Atkinson v. Ormont Mach. Co., Inc.*, 423 N.Y.S.2d 577, 102 Misc.2d 468.—*Sales* 255.

N.C.App. 1990. City is not "natural person" within meaning of rule permitting server to leave process with other persons to obtain substitute process when summons is directed to natural person. Rules Civ.Proc., Rule 4(j)(1)(a), G.S. § 1A-1.—*Johnson v. City of Raleigh*, 389 S.E.2d 849, 98 N.C.App. 147, review denied 394 S.E.2d 176, 327 N.C. 140.—*Mun Corp* 1029.

Wis.App. 2001. A "person" is defined as (1) a human being, (2) an entity, such as a corporation that is recognized by law as having the rights and duties of a human being; in contrast, a "natural person" is defined as a human being, as distinguished from an artificial person created by law.—*Industry to Industry, Inc. v. Hillsman Modular Molding, Inc.*, 633 N.W.2d 245, 247 Wis.2d 136, 2001 WI App 177, review granted 635 N.W.2d 781, 247 Wis.2d 1031, 2001 WI 117, affirmed 644 N.W.2d 236, 252 Wis.2d 544, 2002 WI 51.—*Statut* 199.

NATURAL PERSON IN THE SAME EMPLOY

Mich.App. 1967. Employer's staff physician whose alleged malpractice aggravated injury which was compensable under Workmen's Compensation Act was a "natural person in the same employ" as plaintiff employee and was immune from suit by employee under the Workmen's Compensation Act. M.C.L.A. § 413.15.—*Jones v. Bouza*, 152 N.W.2d 393, 7 Mich.App. 561, affirmed 160 N.W.2d 881, 381 Mich. 299.—*Work Comp* 2253.

NATURAL PERSON'S

Cal.App. 2 Dist. 1963. Typed name of Attorney General, preceding his designation as attorney general, and signatures of five of his deputies below verification of complaint charging violations of Cartwright Act constituted subscriptions of "natural persons" within statute requiring accusatory pleading to be made and subscribed by natural person, in view of other statutes. West's Ann.Pen.Code,

§ 959; West's Ann.Bus. & Prof.Code, §§ 16700 et seq., 16754.—Rocklite Products v. Municipal Court of Los Angeles Judicial Dist., 32 Cal.Rptr. 183, 217 Cal.App.2d 638.—Ind & Inf 51(2).

Colo.App. 1992. Service of process upon secretary whose employer owned corporation and whose president was corporation's registered agent was registered agent's "stenographer" within meaning of rule permitting process to be served on "natural person's" stenographer; secretary was performing services directly for registered agent as his personal secretary at same address that he had listed as corporation's registered office, making it reasonable to conclude that secretary would have given registered agent notice of service upon her. Rules Civ.Proc., Rule 4(e), (e)(1, 5).—Swanson v. Precision Sales and Service, Inc., 832 P.2d 1109.—Corp 507(12).

Mich.App. 1974. Union steward who allegedly assaulted workman who was union member and who was in steward's office to file grievance was engaged in activities on behalf of employer, and both plaintiff and union steward were "natural persons" in same employ so as to preclude workman from maintaining action against union steward for damages by reason of assault. —M.C.L.A. § 418.827(1).—Herndon v. UAW Local No. 3, 224 N.W.2d 334, 56 Mich.App. 435.—Work Comp 2168.

Mo.App. 1975. As used in statutes authorizing incorporation of banks by "persons," quoted word means "natural persons." Sections 196.311(8), 197.020, subd. 3, 266.291(1), 351.010 et seq., 351.050, 362.015, 362.030, 362.415, subds. 1, 4, 5, 400.1–201(30) RSMo 1969, V.A.M.S.—Mark Twain Cape Girardeau Bank v. State Banking Bd., 528 S.W.2d 443.—Banks 23.

Nev. 1936. Cattle brand recorded in name of "Wm. De Long's Boys" held recorded in name of "natural persons," within requirement of statute relating to branding, as respects rights, as against chattel mortgagee, of children of mortgagor of cattle and their increase who had prior to mortgage given certain cattle to children and recorded brands for children. Comp.Laws, §§ 3790, 3795, 3799.—Warren v. De Long, 59 P.2d 1165, 57 Nev. 131, rehearing denied 60 P.2d 608, 57 Nev. 131.—Anim 8.

NATURAL PHYSICAL FORCE

Wis.App. 1996. Necessity defense was not available to defendant charged with heroin possession, even though defendant was a heroin addict and contended that his illegal drug use was made necessary by fact that Department of Corrections (DOC) deprived him of drug treatment it had promised to provide; addiction which drove defendant to inject heroin ultimately rested in his conscious decision to start using illegal drugs, and, therefore, addiction was not a "natural physical force," within meaning of statute setting forth necessity defense. W.S.A. 939.47.—State v. Anthuber, 549 N.W.2d 477, 201 Wis.2d 512, review denied 555 N.W.2d 815, 205 Wis.2d 134.—Crim Law 38.

Wis.App. 1996. "Natural physical force" element of necessity defense does not preclude defendant from asserting medically related necessity as defense, so long as defendant is not responsible for creating a medically related necessity. W.S.A. 939.47.—State v. Anthuber, 549 N.W.2d 477, 201 Wis.2d 512, review denied 555 N.W.2d 815, 205 Wis.2d 134.—Crim Law 38.

Wis.App. 1980. Defense of necessity was unavailable to defendant, a demonstrator who was charged with disorderly conduct arising out of a demonstration against a shipment of spent fuel from a nuclear power plant, in that actions of private industry in shipping spent fuel did not constitute a "natural physical force" within meaning of statute allowing defense of necessity due to "pressure of natural physical forces." W.S.A. 939.47, 947.01.—State v. Olsen, 299 N.W.2d 632, 99 Wis.2d 572.—Crim Law 38.

NATURAL POSSESSION

La. 1976. "Natural possession," which may exist without title, is the corporeal detention of a thing, as by occupying a house or cultivating ground. LSA—C.C. arts. 3426, 3428, 3430.—Norton v. Addie, 337 So.2d 432.—Propty 10.

La. 1935. Word "possession," within statute making it misdemeanor to take possession of land belonging to another without right, means something more than merely going upon lands or premises of another without right, invitation, welcome, or permission, or entering upon them unlawfully, but means "natural possession," which is corporeal detention of thing and implies detention, holding, or controlling of property to exclusion of others, and statute has no application to those who merely intrude upon or trespass upon lands of another (Rev.St. § 818, as amended by Act No. 85 of 1890, § 1, LSA-R.S. 14:63; LSA-C.C. art. 3428).—State v. Crappel, 160 So. 309, 181 La. 715.—Tresp 79.

La. 1935. Word "occupancy," within statute relating to occupancy as mode of acquiring property, is synonymous with word "possession," within statute prohibiting taking of possession of land of another without right and within articles relating to "natural possession," and means taking, holding, actual seizing, and keeping as one's own, such things as may be acquired by capture, and does not relate to occupancy or possession of ground on which or from which wild things which have no owner may be captured (Rev.St. § 818, as amended by Act No. 85 of 1890, § 1, LSA-R.S. 14:63; LSA-C.C. arts. 3412–3415, 3428, 3430).—State v. Crappel, 160 So. 309, 181 La. 715.—Tresp 79.

La. 1910. "Natural possession" is that by which a man detains a thing corporeally, as by occupying a house, cultivating ground, or retaining a movable possession. Civ.Code, art. 3428. Such a possession in its nature must be visible, open, and public.—Albert Hanson Lumber Co. v. Baldwin Lumber Co., 52 So. 537, 126 La. 347.—Eject 16.

NATURAL PREMIUM PLAN

Mo. 1906. The term "natural premium plan," is used in the law of insurance to represent what is commonly known as the "assessment plan," or the writing of insurance by companies limiting their assessments to such sum as is necessary to cover the actual cost of insurance from one renewal period to another.—*Westerman v. Supreme Lodge, K.P.*, 94 S.W. 470, 196 Mo. 670, 5 L.R.A.N.S. 1114.

NATURAL PRESUMPTION

Pa. 1950. A "natural presumption" is the deduction of one fact from another.—*Shechter v. Shechter*, 76 A.2d 753, 366 Pa. 30.—*Evid* 53.

NATURAL PRESUMPTIONS

Tenn. 1944. "Natural presumptions" are derived wholly or directly from circumstances of particular case by means of common experience of mankind, without the aid or control of any rule of law.—*Berretta v. American Cas. Co. of Reading, Pa.*, 178 S.W.2d 753, 181 Tenn. 118.—*Evid* 53.

NATURAL PROCESS

Tex. 1993. "Natural process" which is exempt from Clean Air Act regulation, is one that occurs in nature and is affected or controlled by human devices only to extent normal and usual for particular area involved. V.T.C.A., Health & Safety Code § 382.003(2).—*F/R Cattle Co., Inc. v. State*, 866 S.W.2d 200, rehearing dismissed, on remand 875 S.W.2d 736.—*Environ Law* 274.

Tex.Civ.App.—Dallas 1974. Under State Clean Air Act provision defining "air contaminant" as odors, etc., produced by processes other than "natural," "natural process" is one that occurs in nature and is affected or controlled by human devices only to extent normal and usual for particular area involved, and all other contaminants are "produced by processes other than natural" within meaning of the Act. *Vernon's Ann.Civ.St. art. 4477-5, § 1.03(1)*.—*Europak, Inc. v. Hunt County*, 507 S.W.2d 884.—*Environ Law* 256.

NATURAL PROCESSES

Tex.App.—Eastland 1992. Without regard to location, it was "abnormal or unusual" to concentrate approximately 6,000 baby calves in 1,500 small hutches and in weaning pens, such that odor at calf feeding facility was not produced by "natural processes," and thus was within the jurisdiction Texas Air Control Board under the Clean Air Act. V.T.C.A., Health & Safety Code §§ 382.002, 382.003(2).—*State v. F/R Cattle Co., Inc.*, 828 S.W.2d 303, writ denied, and writ withdrawn, and writ granted, reversed 866 S.W.2d 200, rehearing dismissed, on remand 875 S.W.2d 736.—*Environ Law* 286.

NATURAL PRODUCTS OF THE FARM

Minn. 1939. In prosecution for violation of city ordinance requiring a transient merchant's license in order to sell natural products of the farm, evidence sustained conviction of defendant as a "tran-

sient merchant," selling "natural products of the farm," without a license, where he admitted that he delivered retail milk and butter purchased from another without a license.—*State v. Pehrson*, 287 N.W. 313, 205 Minn. 573, 123 A.L.R. 1045.—*Hawk & P* 7.

NATURAL RESOURCE

W.D.Tex. 1936. Legislature may make regulations for conservation of gas and prevention of its waste, gas being "natural resource" which Legislature by Constitution is given power to conserve, and if regulations have reasonable relationship to conservation, it is immaterial that they interfere with uses which individual may desire to make of his property. *Vernon's Ann.Civ.St.Tex. art. 6008; Vernon's Ann.St.Const.Tex. art. 1, § 16*.—*Henderson Co. v. Thompson*, 14 F.Supp. 328, affirmed 57 S.Ct. 447, 300 U.S. 258, 81 L.Ed. 632.—*Mines* 92.2.

Conn.App. 1994. For purpose of statute requiring plan and zoning commission to consider environmental impact of proposed subdivision where impairment of natural resources has been alleged, determination of whether trees and wildlife are "natural resource" depends on factual determination of their economic value. C.G.S.A. § 22a-19.—*Paige v. Town Plan and Zoning Com'n of Town of Fairfield*, 646 A.2d 277, 35 Conn.App. 646, certification granted in part 649 A.2d 256, 231 Conn. 934, reversed 668 A.2d 340, 235 Conn. 448, on remand 1996 WL 694594.—*Environ Law* 595(2).

La. 1923. Act No. 31 of 1920 (superseded), imposing license tax on business of severing natural resources from soil or water, is valid as applied to gravel under Const.1913, art. 229, as gravel, if not a mineral, is a "natural resource."—*State v. Louisiana Ry. & Nav. Co.*, 96 So. 667, 153 La. 816.—*Licens* 11(1).

Minn. 1993. Because of its historic and architectural significance, armory fell under protection of Minnesota Environmental Rights Act (MERA) as a "natural resource." M.S.A. § 116B.02, subd. 4.—*State by Archabal v. County of Hennepin*, 495 N.W.2d 416.—*Environ Law* 78.

Minn. 1992. Wetland was a "natural resource" within meaning of Minnesota Environmental Rights Act. M.S.A. § 116B.01 et seq.—*Krmpotich v. City of Duluth*, 483 N.W.2d 55, rehearing denied.—*Environ Law* 128.

Minn.App. 2000. City's central business district, as a functioning economic entity, was not a "historical resource," and thus did not qualify as a "natural resource" protected by Minnesota Environmental Rights Act (MERA), even though business district was listed on National Register of Historic Places. M.S.A. §§ 116B.01, 116B.02, subd. 4.—*Stansell v. City of Northfield*, 618 N.W.2d 814, review denied.—*Environ Law* 43, 78.

Minn.App. 1993. Bald eagles and trees in which they roost are "natural resource" within scope of Minnesota Environmental Rights Act (MERA). M.S.A. § 116B.02, subd. 4.—*State ex rel. Wacouta*

Tp. v. Brunkow Hardwood Corp., 510 N.W.2d 27.—*Environ Law* 527.

Ohio 1932. Appropriation of land for park district, which tract lay between two public parks, both devoted to recreational purposes, and recreational value of both parks being preserved by acquisition of appropriated property by the park board acting under Gen.Code, § 2976-7, was authorized as conservation of "natural resources" under Const. art. 2, § 36, as against contention that "natural resources" included only timber, gas, oil, coal, minerals, lakes, and submerged lands, since, to the extent to which a given area possesses features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of its property devoted to park and recreational purposes, same constitutes "natural resource."—*Snyder v. Board of Park Com'rs of Cleveland Metropolitan Park Dist.*, 181 N.E. 483, 125 Ohio St. 336.

NATURAL RESOURCES

C.C.A.10 (Kan.) 1940. Oil and gas located beneath the surface of land are "natural resources" and the public has a definite interest in their preservation from waste and the state has power to regulate the production of oil and gas for purpose of preventing waste and protecting correlative rights of owners producing oil or gas from a common pool.—*State Corporation Commission of Kansas v. Wall*, 113 F.2d 877.—*Mines* 92.43.

S.D.Fla. 1969. Coral reefs and their coral and piscatorial inhabitants are "natural resources" as term is generally understood and as defined by Outer Continental Shelf Lands Act and Geneva Convention on the Continental Shelf, defining extent of Continental Shelf. Outer Continental Shelf Lands Act, § 1 et seq., 43 U.S.C.A. § 1331 et seq.; Submerged Lands Act, § 2(e), 43 U.S.C.A. § 1301(e).—*U.S. v. Ray*, 294 F.Supp. 532, affirmed in part, reversed in part 423 F.2d 16.—*Intern Law* 5; *U S* 2.

N.D.N.Y. 1942. Where the state of New York took its natural resources consisting of the Saratoga Springs and, through a bottling process, put those resources into a preserved condition where they could be sold to the public in competition with private waters, the bottling and sale of the waters was a "business enterprise conducted for gain", and hence the state's agencies were not immune from federal taxes imposed upon bottled water on theory that the state was engaged only in the sale of its "natural resources". Revenue Act 1932, § 615(a)(5), 26 U.S.C.A.Int.Rev.Acts, page 613; Laws N.Y.1930, c. 866; Laws N.Y.1933, c. 208; Laws N.Y.1937, c. 279.—*U.S. v. State of N Y*, 48 F.Supp. 15, affirmed 140 F.2d 608, 163 A.L.R. 538, certiorari granted *State of NY v. U S*, 64 S.Ct. 1286, 322 U.S. 724, 88 L.Ed. 1561, affirmed 66 S.Ct. 310, 326 U.S. 572, 90 L.Ed. 326.—*Tax* 18.

S.D.N.Y. 1986. "Natural resources," for purposes of Comprehensive Environmental Response, Compensation, and Liability Act provision that generators and transporters of hazardous waste are

liable for damages to natural resources, included waters of bays and creek, along with underground aquifers lying beneath affected landfills, which were under control or management of city. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101(16), 107(a)(4)(C), 42 U.S.C.A. §§ 9601(16), 9607(a)(4)(C).—*City of New York v. Exxon Corp.*, 633 F.Supp. 609.—*Environ Law* 446.

Conn. 1989. Term "natural resources" as used in Environmental Protection Act did not include agricultural land and thus, town planning and zoning commission was not required to consider allegations of pollution, impairment or destruction of agricultural land or reasonable alternatives to proposed subdivision. C.G.S.A. §§ 22a-14 et seq., 22a-19.—*Red Hill Coalition, Inc. v. Town Plan and Zoning Com'n of Town of Glastonbury*, 563 A.2d 1347, 212 Conn. 727.—*Zoning* 381.5.

La. 1942. There is no statutory definition of the status of sand and gravel in mineral right reservations, but indirectly "sand" and "gravel" have been classed as "natural resources" as distinguished from "minerals" such as oil, gas, sulphur, lignite, etc. LSA-R.S. 41:98 note, 41:1006 note, 47:631 et seq., 56:6 et seq.; Act No. 12 of 1912, Ex.Sess.; Act No. 296 of 1914.—*Holloway Gravel Co. v. McKowen*, 9 So.2d 228, 200 La. 917.—*Mines* 55(5).

La. 1927. Sand, gravel, and shells owned by state held to be "natural resources," which are under control of state department of conservation. Act No. 127 of 1912, LSA-R.S. 56:6 et seq.—*Irion v. Lyons*, 113 So. 857, 164 La. 306.—*States* 67.

Ohio 1932. Appropriation of land for park purposes held authorized as conservation of "natural resources". Gen.Code, § 2976-7; Const. art. 2, § 36.—*Snyder v. Board of Park Com'rs of Cleveland Metropolitan Park Dist.*, 181 N.E. 483, 125 Ohio St. 336.—*Em Dom* 41; *Mun Corp* 223.

Ohio 1932. Such appropriation of land for park district, which tract lay between two public parks, both devoted to recreational purposes, and recreational value of both parks being preserved by acquisition of appropriated property by the park board acting under Gen. Code, § 2976-7, was authorized as conservation of "natural resources" under Const. art. 2, § 36, as against contention that "natural resources" included only timber, gas, oil, coal, minerals, lakes, and submerged lands, since, to the extent to which a given area possesses features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of its property devoted to park and recreational purposes, same constitutes "natural resources."—*Snyder v. Board of Park Com'rs of Cleveland Metropolitan Park Dist.*, 181 N.E. 483, 125 Ohio St. 336.—*Em Dom* 41.

Ohio 1932. Appropriation of land for park district, which tract lay between two public parks, both devoted to recreational purposes, and recreational value of both parks being preserved by acquisition of appropriated property by the park board acting under Gen.Code, § 2976-7, was authorized as con-

servation of "natural resources" under Const. art. 2, § 36, as against contention that "natural resources" included only timber, gas, oil, coal, minerals, lakes, and submerged lands, since, to the extent to which a given area possesses features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of its property devoted to park and recreational purposes, same constitutes "natural resource."—*Snyder v. Board of Park Com'rs of Cleveland Metropolitan Park Dist.*, 181 N.E. 483, 125 Ohio St. 336.

NATURAL RESULT

Md. 1939. The expression "natural result," in provision of Workmen's Compensation Act defining "injury" and "personal injury" as meaning only accidental injuries arising out of and in course of employment and such disease or infection as may naturally result therefrom, means no more than natural and proximate result, and it is immaterial whether such result is usual or unusual, if there is direct causal connection between injury and disease. Code Pub.Gen.Laws 1924, art. 101, § 65(6).—*Unger & Mahon, Inc. v. Lidston*, 9 A.2d 604, 177 Md. 265.—Work Comp 597.

Md. 1924. "Natural result," as relating to disease naturally resulting from injuries to employee, means that there must be a causal connection between accident and disease, or that disease is, with reasonable certainty, directly attributable to accident.—*Bramble v. Shields*, 127 A. 44, 146 Md. 494.—Work Comp 524.

Mo.App. W.D. 1998. A "natural result," for purposes of requirement that local government employee seeking disability retirement prove that injury was natural and proximate result of performance of his job duties, is a condition which flows naturally and directly from the events or matter inquired about. V.A.M.S. § 70.680.—*Hay v. Schwartz*, 982 S.W.2d 295.—Mun Corp 220(9).

Mo.App. 1937. In action against store owner for injuries received by customer when she fell on slippery floor of store, wherein customer alleged generally injury to her head, neck, and back, owner held entitled to continuance to enable it to meet new issue after petition was amended to allege aggravation of pre-existing arthritic condition, since such aggravation of pre-existing condition was not "necessary result," although a "natural result," of injury, and hence amendment broadened issues.—*Simon v. S. S. Kresge Co.*, 103 S.W.2d 523.—Pretrial Proc 720.

N.J.Super.A.D. 1949. Truck company whose negligence is established is chargeable with damages that are the natural and proximate result thereof; "natural result" meaning such as might reasonably be foreseen; "proximate" meaning that no other culpable and efficient agency intervened between such negligence and injury to plaintiff.—*Batts v. Joseph Newman, Inc.*, 67 A.2d 348, 4 N.J.Super. 393, affirmed 71 A.2d 121, 3 N.J. 503.—Autos 201(1.1), 201(6).

Tenn. 1927. Disease of which accidental injury is moving, exciting, or contributing cause is "natural result" of injury. Workmen's Compensation Law.—*King v. Buckeye Cotton Oil Co.*, 296 S.W. 3, 155 Tenn. 491, 53 A.L.R. 1086.—Work Comp 524.

Tenn. 1927. Death of fireman held "natural result" of heat prostration, where prostration was contributing cause of pneumonia causing death. Workmen's Compensation Law.—*King v. Buckeye Cotton Oil Co.*, 296 S.W. 3, 155 Tenn. 491, 53 A.L.R. 1086.—Work Comp 600.

Tex.Civ.App.—Dallas 1943. The words "producing cause" and "natural result", as used in relation to infection or disease following an injury in a compensation case, are not such legal terms as should be defined, but where correctly defined submission of issue as to whether disability was natural result of injury was not error. Rev.Stat.1925, art. 8309, § 1, subd. 5.—*Strong v. Aetna Cas. & Sur. Co.*, 170 S.W.2d 786.—Trial 219.

Tex.Civ.App.—Dallas 1943. Trial court, in submitting special issue to jury to determine whether claimant's disability was natural result of blister on his foot, properly defined "natural result" as a condition which flows naturally and directly from the events or matter inquired about. Rev.St.1925, art. 8309, § 1, subd. 5.—*Strong v. Aetna Cas. & Sur. Co.*, 170 S.W.2d 786.—Trial 232(5).

Tex.Civ.App.—Dallas 1943. A "natural result" in provision of Workmen's Compensation Law declaring that disease or infection to be compensatory must naturally result from injury is the direct causal connection between injury and disease. Vernon's Ann.Civ.St. art. 8309, § 1, subd. 5.—*Strong v. Aetna Cas. & Sur. Co.*, 170 S.W.2d 786.—Work Comp 524, 530.

NATURAL RIGHT

Ala. 1938. The right of suffrage or the right to hold office under state's authority, unlike the right to engage in a gainful occupation, is a "political privilege" or "civil right" under the state's control so long as it is not denied on account of race, color, or previous condition of servitude, rather than a "privilege," "immunity," "inherent right," or "natural right."—*Ex parte Bullen*, 181 So. 498, 236 Ala. 56.—Elections 1; Office 1.

Ky. 1941. The right to make a will is not a "natural right" but one wholly of statutory origin.—*Howe v. Howe's Ex'r*, 155 S.W.2d 196, 287 Ky. 756.

Md. 1943. The right of a person to receive property by will or inheritance is not a "natural right" but a "privilege" granted by state and state in granting such privilege may require person receiving benefit thereof to pay an excise tax for its enjoyment.—*Safe Deposit & Trust Co. of Baltimore v. Bouse*, 29 A.2d 906, 181 Md. 351.—Des & Dist 1; Tax 856.1; Wills 1.

Mich. 1942. The practice of law is not a "property right" or a "natural right" or right guaranteed by constitution, but a "privilege" to those who attain certain standards of learning and charac-

ter.—Ayres v. Hadaway, 6 N.W.2d 905, 303 Mich. 589.—Atty & C 14; Const Law 88.

Minn. 1947. A “natural right” to flowage or drainage is not an “easement”, although they have some things in common, such as fact that rights of upper tenant burden and restrict use of lower one.—Duenow v. Lindeman, 27 N.W.2d 421, 223 Minn. 505.—Waters 119(1).

Mo. 1938. The right to sell intoxicating liquor is not a “natural right” and the state may impose limitations, conditions, burdens and responsibilities upon those who engage in the traffic.—Hann v. Fitzgerald, 119 S.W.2d 808, 342 Mo. 1166.—Int Liq 1.

Mo. 1938. Neither the revocation of licenses issued to saloon keepers nor prosecution of the saloon keepers for selling nonintoxicating beer on Sundays would constitute an invasion of saloon keepers’ property rights, in view of fact that right to sell intoxicating liquor is not a “natural right” and is subject to regulation by the state. V.A.M.S. §§ 311.200, 311.290, 311.880; V.A.M.S. Const. art. 2, § 30.—Hann v. Fitzgerald, 119 S.W.2d 808, 342 Mo. 1166.—Const Law 287.2(3); Int Liq 15.

Mo.App. 1941. The right to sell intoxicating liquor is not a “natural right” and state may impose limitations, conditions, burdens and responsibilities upon those to whom is extended privilege of engaging in such traffic.—State ex rel. Klein v. Balsiger, 151 S.W.2d 521, certiorari quashed State ex rel. Klein v. Hughes, 173 S.W.2d 877, 351 Mo. 651.—Int Liq 6.

N.M. 1940. The “civil rights” of citizens, including liberty of person and of conscience, and the right to acquire and possess property, are distinguishable from “political privilege” of suffrage, the right to vote not being a “natural right”, such as right to personal security, and personal liberty and the right to acquire and enjoy property.—Wilson v. Gonzales, 106 P.2d 1093, 44 N.M. 599.—Elections 1.

N.Y.Sup. 1941. The right to be appointed to any public office is not a “vested right” nor is it a “natural right” or an “inalienable right” and it is but a “privilege”.—Fink v. Kern, 26 N.Y.S.2d 891, 176 Misc. 114, affirmed 29 N.Y.S.2d 502, 262 A.D. 829.—Const Law 102(1).

Tex.Civ.App.—Eastland 1941. A “seniority right” is a “contract right” and is not a “natural right” or a right of that classification a violation of which constitutes a tort.—Fine v. Pratt, 150 S.W.2d 308.—Labor 3; Mast & S 3(2).

NATURAL RIGHTS

Ct.Cl. 1946. Easements which are given by law to every owner of land because without them there would be no security and enjoyment of land are inherent in the land and are often termed “natural rights”.—Camp Far West Irr. Dist. v. U.S., 68 F.Supp. 908, 107 Ct.Cl. 263.

Cal.App. 4 Dist. 1961. “Natural rights” are those which grow out of nature of man and depend

upon his personality and are distinguished from those which are created by positive laws enacted by a duly constituted government to create an orderly civilized society.—In re Gogabashvele’s Estate, 16 Cal.Rptr. 77, 195 Cal.App.2d 503.—Com Law 9.

Fla. 1941. Courts will not take cognizance of an action arising from the expulsion of a member of a voluntary association unless some civil or contractual right is involved. “Civil rights” or “contractual rights” are distinguishable from “natural rights” or “political rights” in that they are such as the law will enforce, and they have reference to the enjoyment of such guaranties as are contained in the constitution or statutes. If not repealed by legal fiat, natural rights exist regardless of municipal or other law on which civil rights always depend for enforcement.—Sult v. Gilbert, 3 So.2d 729, 148 Fla. 31.

N.J.Sup. 1889. By “civil rights which are protected by the federal Constitution” is meant those rights which the municipal law will enforce, at the instance of private individuals, for the purpose of securing to them the enjoyment of their means of happiness. They are distinguished from “natural rights,” which would exist if there was no municipal law, some of which are abrogated by municipal law, while others lie outside of its scope, and still others are enforceable under it as “civil rights.” “Civil rights” are also distinguishable from “political rights,” which are directly concerned with the institution and administration of government. “Civil rights” include the right of every citizen to seek redress of wrongs and the enforcement of rights in the courts, and, as an incident to this, include the right of a party to testify in a criminal case in his own behalf.—State v. Powers, 17 A. 969, 51 N.J.L. 432, 22 Vroom 432.

N.J.Ch. 1940. “Natural rights,” as used in the section of the Constitution dealing with natural and unalienable rights, are such as appertain originally and essentially to each person as a human being, as a member of organized society, and as a citizen of a free government, and are rights recognized as inherent in the individual member of the state, personal, absolute, and unalienable, and among those rights is that of personal security. Const. art. 1, par. 1.—Bednarik v. Bednarik, 16 A.2d 80, 18 N.J.Misc. 633.—Const Law 83(1).

N.J.Ch. 1908. “Riparian rights,” strictly and technically so called, are rights not originating in grants but arise by operation of law, and are called “natural rights,” because they arise by reason of the ownership of lands upon or along streams of water, which are furnished by nature, and the lands to which these natural rights are attached are called in law “riparian lands.” Riparian lands, in the language of the cases and treatises, include by nature as well the lands over as those along which the stream flows, and riparian rights are incident to lands on the bank, as well as those forming the bed of the stream. Riparian rights, as natural rights, and being incidents annexed solely by operation of law to the lands under and along the stream, different in respect to the effect of contracts upon them, from those ordinary easements in lands whose only source is a grant (actual or presumed), and, by

reason of this difference of the origin and character of the right, are not subject to that general rule relating to easements by force of which unity of ownership of the dominant and servient lands extinguishes the easement.—*City of Paterson v. East Jersey Water Co.*, 70 A. 472, 74 N.J.Eq. 49, affirmed 78 A. 1134, 77 N.J.Eq. 588.

Okla. 1914. By the term “natural rights” is meant those rights which are necessarily inherent, rights which are innate and which come from the very elementary laws of nature such as life, liberty, the pursuit of happiness, and self-preservation.—*Byers v. Sun Sav. Bank*, 139 P. 948, 41 Okla. 728, 52 L.R.A.N.S. 320, Am. Ann. Cas. 1916D, 222, 1914 OK 78.

Tex. 1887. A “right” has been defined to be a well-founded claim which means nothing more or less than a claim recognized or secured by law. Rights which pertain to persons, other than such as are termed “natural rights,” are essentially the creation of municipal law, written or unwritten, and it must necessarily be held that a “right,” in the legal sense, exists, when in consequence of given facts, the law declares that one person is entitled to enforce against another a claim, or to resist the enforcement of a claim, urged by another. Facts may exist out of which, in the course of time or under given circumstances, a right would become fixed or vested by operation of existing law; but until the state of facts, which the law declares shall give a right, comes into existence there cannot be in law a right.—*Mellinger v. City of Houston*, 3 S.W. 249, 68 Tex. 37.

NATURAL-ROCK CEMENT

Tex. Civ. App.—Beaumont 1940. “Hydraulic cement” or “natural-rock cement” is made from a limestone containing a relatively high proportion of clay, by burning at a low heat and grinding the product to powder.—*Trinity Portland Cement Co. v. State*, 144 S.W.2d 329, writ refused.

NATURAL SCENIC BEAUTY

Me. 1974. “Natural scenic beauty,” in purview of act relating to roadside beautification, which provided for taking of land along highways for purpose of preserving natural scenic beauty, furnished adequate standard for measurement of proper exercise of discretion in taking for such purpose. 23 M.R.S.A. §§ 153, 651.—*Finks v. Maine State Highway Commission*, 328 A.2d 791.—Em Dom 57.

NATURAL SHELLFISH BED

W.D. Wash. 1995. In light of practices and understandings in shellfish industry that existed at time of negotiation of Stevens treaties between United States and certain Indian tribes and bands living in Washington territory during 1850's, quantitative definition of “natural shellfish bed,” as a bed capable of sustaining a yield of shellfish that would support a commercial livelihood, would be adopted in implementation plan with such quantity, varying by species, to be determined by parties' agreement or through use of dispute resolution procedures;

however, this definition of natural bed would be applied only in context of determining which beds could not be “staked or cultivated by citizens” and would not limit tribes' right to take shellfish from nonartificial beds irrespective of whether such beds met minimum quantity threshold.—*U.S. v. State of Wash.*, 898 F.Supp. 1453, amended 909 F.Supp. 787, affirmed in part, reversed in part *U.S. v. State of Washington*, 135 F.3d 618, opinion amended and superseded on denial of rehearing 157 F.3d 630, certiorari denied 119 S.Ct. 1376, 526 U.S. 1060, 143 L.Ed.2d 535, certiorari denied *Puget Sound Shellfish Growers v. U.S.*, 119 S.Ct. 1377, 526 U.S. 1060, 143 L.Ed.2d 535, certiorari denied 26 Tideland & Upland Private Property Owners v. U.S., 119 S.Ct. 1377, 526 U.S. 1060, 143 L.Ed.2d 535—Indians 32.10(6).

NATURAL SOLID ASPHALT

N.Y. Ct. Cl. 1918. Under a contract to construct a macadam road providing that the fluxed natural asphalt should be composed of at least 65 per cent. of a refined “natural solid asphalt,” contractor had no right to use an asphalt achieved by refinement not containing a natural solid asphalt, although the material as finally prepared would be identical with that prepared from natural solid asphalt.—*Stanton v. State*, 175 N.Y.S. 568, 103 Misc. 221, affirmed 174 N.Y.S. 922, 187 A.D. 963.—High 113(4).

NATURAL STATE

C.C.A.5 (Ga.) 1942. Under Fair Labor Standards Act exempting employees engaged within area of production in preparing, in their “raw or natural state”, agricultural commodities for market, shelling peanuts though done by machinery and off the producing farm and by one not a farmer is a work excepted from the act. Fair Labor Standards Act of 1938, § 1 et seq., § 13(a) (10), 29 U.S.C.A. § 201 et seq., § 213(a) (10). “Raw” means in common speech not cooked, or refined. “Natural state” is one that has not been artificially changed. “Peanuts” are not really “nuts” but “peas”, the pod and the kernels it contains maturing in the ground instead of in the air and in Georgia they are commonly and accurately called “ground peas”.—*Fleming v. Farmers Peanut Co.*, 128 F.2d 404.

Ky. App. 1982. The term “natural state” within the rule that an underground mine operator is obligated to support the surface and leave it in its natural state means the condition of the surface, including reasonable and foreseeable improvements thereon, at the time the coal is severed, not from the fee, but from the earth.—*Island Creek Coal Co. v. Rodgers*, 644 S.W.2d 339.—Mines 122.

N.Y. Sup. 1931. Right to have air diffused over one's premises in its “natural state” means pure air consistent with locality and nature of community.—*Bove v. Donner-Hanna Coke Corp.*, 254 N.Y.S. 403, 142 Misc. 329, affirmed 258 N.Y.S. 229, 236 A.D. 37, motion denied 258 N.Y.S. 1075, 236 A.D. 775.—Nuis 3(3).

NATURAL STREAM

Ariz. 1921. Ravine or wash with well-defined channel is "natural stream" or "water course." A ravine or wash is "natural stream" or "water course" within the law, where the rains or snows falling on the adjacent hills ran down the ravine or wash in a well-defined channel at irregular intervals.—*City of Globe v. Shute*, 196 P. 1024, 22 Ariz. 280.—Waters 38.

Ariz. 1921. A ravine or wash is a "natural stream" or "water course" within the law, where the rains or snows falling on the adjacent hills ran down the ravine or wash in a well-defined channel at irregular intervals.—*City of Globe v. Shute*, 196 P. 1024, 22 Ariz. 280.—Waters 38.

Colo. 1994. Unconfined aquifer was "natural stream" within meaning of statute defining nontributary ground water. *West's C.R.S.A.* § 37-87-102(1)(b).—*American Water Development, Inc. v. City of Alamosa*, 874 P.2d 352, certiorari denied 115 S.Ct. 575, 513 U.S. 1015, 130 L.Ed.2d 491.—Waters 99.

Colo. 1969. Authority of water officials to administer water is limited to that which has become part of, or is tributary to, a natural stream; a "natural stream" normally consists of surface waters, the underflow which supports these surface waters, and tributary water.—*Pikes Peak Golf Club, Inc. v. Kuiper*, 455 P.2d 882, 169 Colo. 309.—Waters 130.

Mass. 1930. Stream having permanent source, well-defined course, outlet, and many years of continuous flow during portions of year, held "natural stream."—*Yaskill v. Thibault*, 173 N.E. 504, 273 Mass. 266.—Waters 38.

Wyo. 1940. Where seepage water for at least 30 years previous to 1936 flowed down a draw, and on lower end of draw definite channels and banks were formed, continued seepage formed a "natural stream" subject to appropriation. *Const. art. 8, § 1*.—*Binning v. Miller*, 102 P.2d 54, 55 Wyo. 451.—Waters 38, 130.

Wyo. 1940. Where map accompanying application for permit to appropriate water from Willow Creek showed that appropriation was not from stream but from a draw along which was written "waste and seepage water", statement on map was equivalent to direct statement in application that applicant wanted to appropriate waste waters and not water from a natural stream, since water running in a "natural stream" is not "waste or seepage water" even though it may have been such previously. *W.C.S.1945, § 71-245*.—*Binning v. Miller*, 102 P.2d 54, 55 Wyo. 451.—Waters 133.

NATURAL STREAM OF WATER

Md. 1917. In action for diverting a "natural stream of water" carrying surface and house drainage so that it emptied into plaintiff's premises, evidence held to show existence of such a stream.—*City Dairy Co. v. Scott*, 100 A. 295, 129 Md. 548.—Waters 126(2).

NATURAL STREAM OR WATER COURSE

N.Y.A.D. 3 Dept. 1965. Conservation Law section authorizing state superintendent of public works to direct owner to remove, repair, or reconstruct a structure for impounding water in a "natural stream or water course", if public safety requires such removal, repair, or reconstruction, relates only to impounding structures in a natural stream or natural water course. *Conservation Law, § 948*.—*Herkimer Pulp & Packaging Corp. v. McMorran*, 264 N.Y.S.2d 848, 24 A.D.2d 929, appeal denied 270 N.Y.S.2d 1025, 17 N.Y.2d 423, 217 N.E.2d 40.—Waters 37.

N.Y.A.D. 3 Dept. 1965. Order of state superintendent of public works requiring owner to make changes to structures for impounding water in its canal complex was properly annulled, since such structures, except diversion dam in adjacent creek which impounded only trifling amount of water and did not appear to be unsafe and hence must be treated as de minimis, were not located in a "natural stream or water course" within Conservation Law section authorizing superintendent of public works to regulate impounding structures in such streams and water courses. *Conservation Law, § 948*.—*Herkimer Pulp & Packaging Corp. v. McMorran*, 264 N.Y.S.2d 848, 24 A.D.2d 929, appeal denied 270 N.Y.S.2d 1025, 17 N.Y.2d 423, 217 N.E.2d 40.—Canals 25.

NATURAL STREAMS

Neb. 1941. Where drainage ditches constructed and maintained by drainage district were artificial constructions, and waters contained in ditches and carried thereby had their sources in low-lying lands which, in a state of nature, were too wet to farm and over which surface waters were diffused and through which subterranean waters percolated waters in ditches were not subject to legal appropriation under Nebraska irrigation laws as waters of "natural streams," and hence an irrigation district's attempt to secure such waters by exercise of right of eminent domain was unauthorized. *Laws 1889, c. 68, art. 1, § 1; Laws 1895, c. 69, §§ 42, 43; Laws 1919, c. 190, tit. 7, art. 5, div. 1, § 1 et seq.; Comp.St.1929, § 31-401 et seq.; Const. art. 15, §§ 4-6*.—*Drainage Dist. No. 1 of Lincoln County v. Suburban Irr. Dist.*, 298 N.W. 131, 139 Neb. 460.—*Em Dom 45; Waters 130*.

Neb. 1941. Where drainage ditches constructed and maintained by drainage district were artificial constructions, and waters contained in ditches had their sources in low-lying lands which, in the state of nature, were too wet to farm and over which surface waters were diffused and through which subterranean waters percolated, and there was uncontradicted evidence that for more than ten years there had been no "seeped" land within drainage district, waters in ditches were not subject to legal appropriation under Nebraska irrigation laws as waters of "natural streams" or "natural water courses" and hence an irrigation district's attempt to secure such waters by exercise of right of eminent domain was unauthorized. *Laws 1880, c. 68, art. 1, § 1; Laws 1895, c. 69, §§ 42, 43; Laws 1919, c.*

190, tit. 7, art. 5, div. 1, § 1 et seq.; Comp.St.1929, § 31-401 et seq.; Const. art. 15, §§ 4-6.—*Drainage Dist. No. 1 of Lincoln County v. Suburban Irr. Dist.*, 298 N.W. 131, 139 Neb. 460.

NATURAL STREAM WATERS

Cal. 1950. Where riparian owners in territory near river co-operated in construction of flood control levees for protection of their land, and such levees existed for 62 years before state flood control project was constructed, and substantial sums in farm investments were made in reliance upon levees, waters contained by levees before completion of state project were “natural stream waters” which could not be diverted by state onto lands of private landowner without liability for damage. Const. art. 1, § 14.—*Clement v. State Reclamation Bd., Sacramento San Joaquin Drainage Dist.*, 220 P.2d 897, 35 Cal.2d 628.—*Em Dom* 2(10).

NATURAL SUBSTANCE

La.App. 5 Cir. 1996. Instances in which harmful substance in a food product may be deemed a “natural substance,” so as to require a determination of defendant’s negligence, include those where product does not undergo the manufacturing process and an object with the potential to cause injury remains in the product.—*Melady v. Wendy’s of New Orleans, Inc.*, 673 So.2d 1094, 95-913 (La.App. 5 Cir. 4/16/96), writ denied 675 So.2d 1088, 1996-1249 (La. 6/21/96).—*Food* 25.

NATURAL SURFACE WATER CHANNEL OR DRAINWAY

Mo.App. 1974. A “natural surface water channel or drainway” is a drainway through which an upper landowner may discharge surface waters from his land because it is via his drainway that nature provided for the flow of surface waters; it need not have banks or beds and the contour of the topographical features of the land itself constitute the “channel” within which the surface water flow is contained.—*Borgmann v. Florissant Development Co.*, 515 S.W.2d 189.—*Waters* 119(3).

NATURAL TERM

N.Y.Sur. 1949. The “natural term” of a trust during which period it must necessarily terminate is the period of duration between time of its creation and time when it terminates because all the purposes for which it was created have been accomplished.—*In re Fischer’s Estate*, 87 N.Y.S.2d 324.—*Trusts* 60.

NATURAL TERM OF A TRUST

N.Y.Sup. 1957. The “natural term of a trust” is the lives of all the beneficiaries.—*In re Thorne’s Trust*, 167 N.Y.S.2d 211, 9 Misc.2d 126, affirmed *Matter of Thorne*, 175 N.Y.S.2d 559, 6 A.D.2d 783, motion granted 185 N.Y.S.2d 803, 5 N.Y.2d 1047, 158 N.E.2d 499, affirmed 191 N.Y.S.2d 165, 6 N.Y.2d 967, 161 N.E.2d 391.—*Trusts* 60.

NATURAL TOPOGRAPHIC FEATURES

N.C. 1982. Tree lines do not constitute “natural topographic features” within meaning of annexation statute’s requirement that, in fixing new municipal boundaries, municipal governing board use “natural topographic features” wherever practical. G.S. § 160A-36(d).—*Greene v. Town of Valdese*, 291 S.E.2d 630, 306 N.C. 79.—*Mun Corp* 29(4).

NATURAL USES

Cal. 1930. “Natural uses,” as regards rights of riparian owner, are those arising out of the necessities of life on the riparian lands, such as household use, drinking and watering domestic animals.—*Cowell v. Armstrong*, 290 P. 1036, 210 Cal. 218.

NATURAL WANT

Neb. 1966. Underground waters, whether percolating waters or underground streams, are part of waters referred to in Constitution as “natural want”, and the waste of such waters as natural resource is against public policy. Const. art. 15, § 4.—*In re Metropolitan Utilities Dist. of Omaha*, 140 N.W.2d 626, 179 Neb. 783.—*Waters* 99.

Neb. 1950. A “natural want” within meaning of constitutional provision that the necessity of water for domestic use and for irrigation purposes is declared to be a “natural want”, is one absolutely necessary to human existence, and therefore its legislative conservation and control for such uses is a public purpose. R.S.Supp.1949, § 46-501 et seq.; Const. art. 15, § 4.—*Nebraska Mid-State Reclamation Dist. v. Hall County*, 41 N.W.2d 397, 152 Neb. 410.—*Waters* 182.

Nev. 1936. It may be that, under the physical conditions existing in some portions of the state, irrigation is not theoretically a “natural want,” in the sense that living creatures cannot exist without it; but its importance as a means of producing food from the soil makes it less necessary, in a scarcely appreciable degree, from the use of water by drinking it.—*Warren v. De Long*, 59 P.2d 1165, 57 Nev. 131, rehearing denied 60 P.2d 608, 57 Nev. 131.

NATURAL WANTS

Vt. 1909. A finding of the master directed to find and report whether an upper proprietor’s use of a stream by maintaining a dam across it was reasonable, that the stream was so small that the amount of water flowing in it during certain seasons of the year was barely sufficient under the best conditions to supply the “natural” wants of the users thereof, was a finding that the upper proprietor’s use was unreasonable because the stream was so small that at times it furnished barely enough water for the domestic uses of lower proprietors; the term “natural wants” designating domestic uses.—*Lawrie v. Sillsby*, 74 A. 94, 82 Vt. 505.—*Waters* 63.

NATURAL WATER COURSE

S.D.Ind. 2000. Under Indiana law, a “natural watercourse” is a course or channel consisting of well-defined banks and a bottom through which

water flows in a definite direction for a substantial period each year.—*Heath v. Wal-Mart Stores, Inc.*, 113 F.Supp.2d 1294.—Waters 38.

Ariz. 1949. "Flood waters" are distinguished from "surface waters" in that flood waters have broken away from a stream, while surface waters have not yet become part of a water course, and the term "flood waters" is used to indicate waters which escape from a water course in great volume and float over adjoining land in no regular channel, though fact that such errant waters make for themselves a temporary channel or follow some natural channel, gully, or depression does not affect their character as flood waters or give to course which they follow the character of a "natural water course".—*Maricopa County Municipal Water Conservation Dist. No. 1 v. Warford*, 206 P.2d 1168, 69 Ariz. 1.—Waters 38, 115.

Ariz.App. Div. 1 1971. A "natural water course" has a source and terminus, banks and channel, through which waters flow at least periodically.—*Kirkpatrick v. Butler*, 483 P.2d 790, 14 Ariz.App. 377.—Waters 38.

Ariz.App. 1966. Wash which extended for at least three miles and which drained an area of at least four square miles did not drain too diminutive an area to be classified as a "natural water course".—*Diedrich v. Farnsworth*, 413 P.2d 774, 3 Ariz.App. 264.—Waters 38.

Ark. 1916. The fact that a riparian owner dug a ditch to straighten a channel, without changing the natural and general course of the water, and the water took the new course, does not make it any the less a "natural water course".—*Boone v. Wilson*, 188 S.W. 1160, 125 Ark. 364.—Waters 38.

Cal. 1917. Sutter basin in reclamation district 1500 does not constitute a "natural water course," since it has no well-defined channel, a "depth of water of one foot along the line of greatest depression" meaning an expanse of water a mile on either side.—*Gray v. Reclamation Dist. No. 1500*, 163 P. 1024, 174 Cal. 622.

Cal.App. 3 Dist. 1956. Dry channel through which water had previously flowed and through which flood waters passed during spring floods and freshets was "natural watercourse" and land through which channel passed was accordingly burdened with that servitude. Water Code, § 1201.—*Podesta v. Linden Irrigation District*, 296 P.2d 401, 141 Cal.App.2d 38.—Waters 38, 40.

Cal.App. 6 Dist. 2002. Under the "natural watercourse" rule, a riparian landowner had a privilege to drain surface water into a natural watercourse, regardless of the effect of that drainage on downstream landowners.—*Arreola v. County of Monterey*, 122 Cal.Rptr.2d 38, 99 Cal.App.4th 722, 100 Cal.App.4th 205A, as modified on denial of rehearing, and review denied.—Waters 119(3).

Idaho 1942. Generally a "natural water course" is one made by the natural flow of water caused by general superficies of the surrounding land from which the water is collected into one channel, and surplus water becomes a natural water course at the

point where it begins to form a reasonably well-defined channel with bed and banks or sides and current, although stream itself may be very small and water may not flow continuously.—*Scott v. Watkins*, 122 P.2d 220, 63 Idaho 506.—Waters 38.

Idaho 1942. In determining whether a stream is a "natural water course", its size is not material element in respect of the volume of water carried, and although the element of permanence is necessary, great age is not an essential attribute of a water course.—*Scott v. Watkins*, 122 P.2d 220, 63 Idaho 506.—Waters 38.

Idaho 1942. The particular source of a stream is immaterial in determining whether it is a "natural water course", and the supply of a natural water course may come from springs, swamp, surface water, artificially controlled water over which creator has lost control, artesian wells, lake, or a pond formed by surface water, the overflow of a lake because of rainfall or from a glacier.—*Scott v. Watkins*, 122 P.2d 220, 63 Idaho 506.—Waters 38.

Idaho 1942. Evidence supported finding that stream which crossed through plaintiff's lands had a well-defined channel and bed with high banks and in its natural condition was sufficiently large to carry all the water which came into stream from year to year, so as to be a "natural water course", and hence plaintiff was entitled to recovery of damages as result of defendants' unauthorized construction of a dam across the stream, and to injunctive relief.—*Scott v. Watkins*, 122 P.2d 220, 63 Idaho 506.—Waters 179(4).

Ill. 1920. Railroad can recover damages for artificial drain not in natural channel; "natural depression;" "natural water course." Within Levee Drainage Act, §§ 55, 56, requiring a railroad to construct or enlarge a bridge crossing a drain constructed on the line of any natural depression or water course, the "natural water course" is the place where the water flows according to nature, and the "natural depression" contemplated is not any low place in the valley, where water would accumulate or flow when in flood time it has spread over all the valley, but is that lowest point in the valley where the natural drainage takes the water flowing from the dominant to the servient lands, so that a railroad company is not required to erect without compensation a bridge, and to make other changes in its roadbed, made necessary by the construction of a drain in the valley outside the natural water course running through the valley, though the place where the new channel crossed the railroad track was slightly lower than the land on either side of the proposed channel.—*Indian Creek Drainage Dist. No. 2 v. Chicago, B. & Q.R. Co.*, 129 N.E. 105, 295 Ill. 339.—Drains 57.

Ill. 1920. Within Levee Drainage Act, §§ 55, 56, S.H.A. ch. 42, § 12-4, requiring a railroad to construct or enlarge a bridge crossing a drain constructed on the line of any natural depression or water course, the "natural water course" is the place where the water flows according to nature, and the "natural depression" contemplated is not any low place in the valley, where water would

accumulate or flow when in floodtime it has spread over all the valley, but is that lowest point in the valley where the natural drainage takes the water flowing from the dominant to the servient lands, so that a railroad company is not required to erect without compensation a bridge, and to make other changes in its roadbed, made necessary by the construction of a drain in the valley outside the natural water course running through the valley, though the place where the new channel crossed the railroad track was slightly lower than the land on either side of the proposed channel.—*Indian Creek Drainage Dist. No. 2 v. Chicago, B. & Q.R. Co.*, 129 N.E. 105, 295 Ill. 339.—*Drains* 57.

Ill. 1912. To constitute a "natural water course," it is not necessary that there should be a stream with well-defined banks and bed, or that the water flow at all seasons of the year, but, where the conformation of the land is such as to give surface water flowing from one tract to another, a fixed determinate course, so as to uniformly discharge it on the servient tract at a fixed and definite point, the course thus uniformly followed by the water in its flow is a water course.—*Town of Bois D'Arc v. Convery*, 99 N.E. 666, 255 Ill. 511.

Ill. 1907. A depression or slough separating an island from the Mississippi river, so that in time of high water it became an arm of the river with water flowing into it at the north end and emptying at the south end, and also forming a drain for surface water, was a "natural water course."—*St. Louis Merchants' Bridge Terminal Ry. Ass'n v. Schultz*, 80 N.E. 879, 226 Ill. 409.

Ind.App. 1 Dist. 1988. It is sufficient to constitute a "natural watercourse" that water from heavy rains is regularly discharged through well-defined channel; size of watercourse is immaterial, as is necessity of constant waterflow.—*Gasway v. Lalen*, 526 N.E.2d 1199, rehearing denied.—*Waters* 38.

Ind.App. 2 Div. 1916. Where part of natural water course was improved by confining it in artificial channel it did not thereby lose its characteristics as a "natural water course."—*Trout v. Woodward*, 114 N.E. 467, 64 Ind.App. 333.—*Waters* 38.

Ind.App. 2 Div. 1916. Stream of water, flowing six to nine months in each year, throughout entire course of trough or of swale with marked depression or surface indications of channel, held a "natural water course."—*Trout v. Woodward*, 114 N.E. 467, 64 Ind.App. 333.—*Waters* 38.

Ind.App. 2 Div. 1915. The complaint showed the obstruction of a "natural water course," which is a channel cut by the force of its running waters, while a "stream of water" is a current of water having continuous flow in one direction, and a "water course" is a channel cut through the turf by erosion of running water, with well-defined banks and a bottom, and through which water flows ordinarily and frequently for substantial periods each year.—*Vandalia R. Co. v. Yeager*, 110 N.E. 230, 60 Ind.App. 118.

Ind.App. 1 Div. 1913. A "natural water course" is a channel cut by erosion of running water, with

well-defined banks and bottom, through which water flows and has flowed immemorially, not necessarily all the time, but for substantial periods of each year, and fact that it is lost in swamp or lake, emerging therefrom at lower level does not destroy its character. The same line of discharge of surface water from pond in times of heavy rains or melting snows, or an artificial channel to expedite surface drainage, do not constitute natural water courses.—*Gaskill v. Barnett*, 101 N.E. 40, 52 Ind.App. 654.—*Waters* 38.

Ind.App. 1899. A water course does not cease to be a "natural water course" by reason of the fact that its channel is artificially deepened for the purpose of drainage.—*Cleveland, C., C. & St. L.R. Co. v. Huddleston*, 52 N.E. 1008, 21 Ind.App. 621, 69 Am.St.Rep. 385.

Iowa 1914. Under Code Supp.1907, § 1989a53, I.C.A. § 465.22, providing that an owner of land may drain it by drains constructed wholly thereon discharging into any natural water course, or any depression carrying it into a natural water course, liberally construed to effect its purpose in aid of the reclamation of low and wet land and of good husbandry, it is not necessary to constitute a "natural water course" that the flow of water through it shall be sufficient to wear out a channel with defined sides and banks; but, if surface water uniformly or habitually flows off over a given course having reasonable limits in width, the flow is a "natural water course." Hence an owner of higher land, who put in tiling so as to conduct surface water to a natural depression or swale by which it was carried onto plaintiff's land, as it would have otherwise gone by reason of the slope of the ground and its natural drainage, was not liable in damages.—*Miller v. Hester*, 149 N.W. 93, 167 Iowa 180.

Iowa 1906. To constitute a "natural water course" it is not necessary that the flow of water be sufficient to wear out a channel having well-marked sides and banks; but, if the surface water uniformly or habitually flows over a given course having reasonable limits as to width, the line of its flow is a water course.—*Hull v. Harker*, 106 N.W. 629, 130 Iowa 190.

Kan. 1938. The drainage from adjoining land by reason of its slightly higher elevation toward adjoining property did not constitute a "natural water course."—*Dyer v. Stahlhut*, 78 P.2d 900, 147 Kan. 767.—*Waters* 38.

Kan. 1931. "Natural water course" is distinct channel cut in soil by running water having a bed and banks discernible by casual glance.—*Tompkins v. Brown*, 4 P.2d 454, 134 Kan. 111.—*Waters* 38.

Kan. 1918. A depression in plaintiff's land lower than a depression in defendant's land and into which waters from defendant's depression flow after heavy rains was not necessarily a "natural water course" into which defendant might drain waters under Laws 1911, c. 175, § 2.—*Evans v. Diehl*, 172 P. 17, 102 Kan. 728.—*Waters* 38.

Kan. 1910. It is not essential to the existence of a "natural water course" that the supply should be

living water, but it may be surface water collected on a large watershed which cuts for itself a well-defined channel; nor is it necessary that there should be a constant and continuous flow of water.—*Brown v. Schneider*, 106 P. 41, 81 Kan. 486, 135 Am.St.Rep. 396.

Mass. 1935. Water drained from neighborhood hills and forming natural channel above property of plaintiff and defendant through which it had flowed for many years held “natural water course” notwithstanding water spread out over flat area before reaching defendant’s property and did not run between well-defined banks again until it reached defendant’s property, and plaintiff was entitled to enjoin defendant from flowing plaintiff’s land by obstructing flow of water course.—*Fitzgerald v. Fortier*, 198 N.E. 167, 292 Mass. 268.—*Waters* 61.

Mass. 1908. Where, in an action for obstructing the waters in a ditch, there was evidence that the ditch had been cut in 1653, and plaintiff showed that water had flowed through it a part or all of the time in every year, and defendant showed that it became obstructed by natural and artificial causes, and that for more than 20 years it had ceased to be a natural water course, if it had ever been one, which was denied, an instruction that if the jury found that the ditch was not a natural water course the verdict should be for defendant, and that a course established by the hand of man is not a natural water course, etc., was erroneous, if the court by the term “natural water course” did not include any water course originally made by man.—*Stimson v. Inhabitants of Brookline*, 83 N.E. 893, 197 Mass. 568, 16 L.R.A.N.S. 280, 125 Am.St.Rep. 382, 14 Am.Ann.Cas. 907.—*Waters* 179(5).

Minn. 1958. In order to constitute “natural watercourse” the flow ordinarily must have some substantial permanency and continuity and must be a part of a well-defined stream or body of water.—*Collins v. Wickland*, 88 N.W.2d 83, 251 Minn. 419.—*Waters* 38.

Miss. 1952. A “natural water course” is a water course which has a well-defined bed and banks of varying width and depth, through which water is conveyed and discharged into some substantial reservoir or body of water, but it is not necessary that there be a continual flow.—*Palmer v. Massengill*, 58 So.2d 918, 214 Miss. 379.—*Waters* 38.

Mo. 1937. A winding bayou, 10 to 12 feet in depth, connecting lake with river and having well-defined banks and channel, and containing running water most of the year, the volume depending on the rainfall and stage of the river, was a “natural water course” and water while confined in channel was not “surface water.”—*Keener v. Sharp*, 111 S.W.2d 118, 341 Mo. 1192.—*Waters* 38.

Mo.App. W.D. 1990. “Natural watercourse” is living stream of water with well-defined banks, channel and bed; such stream to be watercourse need not run continuously, but it must be fed from other and more permanent sources than mere surface water.—*Haith v. Atchison County*, 793 S.W.2d 151.—*Waters* 38.

Mo.App. W.D. 1989. “Natural watercourse,” which may not be obstructed without liability for ensuing damages to others, is a stream usually flowing in a particular direction, though it need not flow continually, in a definite channel having a bed, sides or banks and usually discharging itself into some other body of water; it must be something more than mere surface drainage and does not include water flowing in the hollows or ravines in the land which is mere surface water from rain or melted snow and is discharged through them from a higher to a lower level but which at other times are destitute of water.—*Thomas v. Estate of Ducat*, 769 S.W.2d 819, 88 A.L.R.4th 885.—*Waters* 38, 115.

Mo.App. 1974. In order for there to be a “natural watercourse,” there must be a stream, usually flowing in a particular direction, though it need not flow continually, which flows in a definite channel, having a bed, sides or banks, and which usually discharges itself into some other stream or body of water; there must be something more than a mere surface drainage over the entire face of a tract of land, occasioned by unusual freshets or other extraordinary causes and the term does not include water flowing in hollows or ravines which is the mere surface water from rain or melting snow.—*Dudley Special Road Dist. of Stoddard County v. Harrison*, 517 S.W.2d 170.—*Waters* 38.

Mo.App. 1963. Slough which, prior to levee district’s construction of levee, had a confluence with other sloughs all of which emptied into river and formed a collecting point for run off water was a “natural watercourse” even though ditches had been dug into the slough to facilitate the flow of water therein.—*Jones v. Des Moines and Mississippi River Levee Dist. No. 1*, 369 S.W.2d 865.—*Waters* 38.

Mo.App. 1936. Natural drain with well-defined bank which is natural outlet of lake and through which waters will reach common place is “natural watercourse,” although it is called a swag or swamp of creek and whether its course is straight or crooked.—*Keener v. Sharp*, 95 S.W.2d 648, transferred to Mo.S.Ct. 111 S.W.2d 118, 341 Mo. 1192.—*Waters* 38.

Mo.App. 1933. Evidence held to support finding that slough was “natural water course,” entitling landowners to mandatory injunction to compel township to maintain dams across ditches along public road to prevent drainage of water from slough overflowing plaintiffs’ lands (V.A.M.S.Const. art. 2, § 21).—*Place v. Union Tp.*, 66 S.W.2d 584.—*Waters* 126(2).

Mo.App. 1930. Where confirmation of land causes surface water to flow in fixed determined course, so as to uniformly discharge it at definite point, course followed is “natural water course” within sewer district statute. Rev.St.1919, § 8306, V.A.M.S. § 88.553.—*City of Independence, to Use of Flournoy v. Dickinson*, 27 S.W.2d 1081, 224 Mo.App. 899.—*Mun Corp* 450(1).

Mont. 1952. A “natural water course” is a living stream with defined banks and channel, not necessarily running at all times, but fed from other and

more permanent sources than mere surface water.—*Meine v. Ferris*, 247 P.2d 195, 126 Mont. 210.—*Waters* 38.

N.M. 1912. Where surface water in a hilly region of high bluffs seeks an outlet through a gorge or ravine during the rainy season and by its flow assumes a definite and natural channel, and such has always been the case so far as the memory of man runs, such accustomed channel through which the water flows possesses the attributes of a "natural water course." The flow of the water need not be continuous, and the size of the stream is immaterial.—*Jaquez Ditch Co. v. Garcia*, 124 P. 891, 17 N.M. 160.

N.Y.A.D. 2 Dept. 1929. "Natural water course" is natural stream flowing in "definite bed or channel with banks or sides," having permanent sources of supply.—*Kleinberg v. Ratett*, 232 N.Y.S. 478, 225 A.D. 208, reversed 169 N.E. 289, 252 N.Y. 236, reargument denied 170 N.E. 164, 252 N.Y. 616.—*Waters* 38.

N.Y.A.D. 4 Dept. 1909. A living stream, with a well-defined channel, is a "natural water course."—*Wilson v. Pennsylvania R. Co.*, 113 N.Y.S. 1101, 129 A.D. 821.

N.Y.Sup. 1965. A "natural water course" is a natural stream flowing in defined bed or channel, with banks and sides, having permanent sources of supply, uniform or interrupted, and temporarily diminished or suspended, but usually a stream of running water.—*Kennedy v. Moog, Inc.*, 264 N.Y.S.2d 606, 48 Misc.2d 107, affirmed in part, reversed in part 271 N.Y.S.2d 928, 26 A.D.2d 768, affirmed 290 N.Y.S.2d 193, 21 N.Y.2d 966, 237 N.E.2d 356.—*Waters* 38.

N.Y.Sup. 1912. A "natural water course" is a stream having defined bounds and continuity of flow.—*Jennings v. Bohner*, 134 N.Y.S. 943.

N.C. 1939. A "water course" consists of bed, bank and water, and a "natural water course" such as rivers, creeks and branches, have such characteristics while in state of nature and without artificial construction.—*Darr v. Carolina Aluminum Co.*, 3 S.E.2d 434, 215 N.C. 768.—*Waters* 38.

N.C. 1939. A canal is not a "natural water course" unless it is a mere enlargement of a natural water course, even if the canal is the most convenient way to drain land.—*Darr v. Carolina Aluminum Co.*, 3 S.E.2d 434, 215 N.C. 768.—*Waters* 38.

Ohio App. 9 Dist. 1952. Owner of land having a spring from which there flows a stream of water, has only rights of a riparian owner in spring and stream, where stream if allowed to follow its natural course without obstruction, will flow in definite channel onto and across land of adjoining owner, and in such case spring is part of stream and both constitute a "natural watercourse."—*Conobre v. Fritsch*, 111 N.E.2d 38, 92 Ohio App. 520, 50 O.O. 133.—*Waters* 101.

Ohio App. 9 Dist. 1952. Where stream of water from a spring first came into visual existence on high ground on farm and flowed to lower ground

across farm, principally through a 24 inch tile pipe to culvert and then under culvert crossing road to a similar pipe where water was conducted part way across another tract of land, and, within memory of those best able to describe flow of stream, stream had been running encased in tile pipe in same direction for more than fifty years, stream was a "natural watercourse" and landowners had only such rights as are given riparian owners, and injunction would issue to prevent owners of farm from diverting water to their exclusive use.—*Conobre v. Fritsch*, 111 N.E.2d 38, 92 Ohio App. 520, 50 O.O. 133.—*Waters* 101, 107(2).

Or. 1977. Where, in times of flood, any part of stream or water course which becomes separated from main body flows ordinary and consistent course and returns to natural channel as it recedes, it is a "natural water course"; such flooding must be ordinary as opposed to extraordinary flooding; "ordinary flooding" is that which occurs annually or at certain seasons or other regular intervals, which is not of unprecedented magnitude, and which is generally regarded as ordinary.—*Wimmer v. Comp-ton*, 560 P.2d 626, 277 Or. 313, rehearing denied 562 P.2d 976, 278 Or. 149.—*Waters* 38, 171(2).

Or. 1928. Water coming from melting snow or springs and flowing in channel constitutes "natural water course," though passing through swampy place.—*Wright v. Phillips*, 272 P. 554, 127 Or. 420.—*Waters* 38.

S.D. 1946. If surface water in fact uniformly or habitually flows off over a given course, having reasonable limits as to widths, the line of its flow is within the meaning of the law applicable to the discharge of surface water, and is a "natural water course."—*Johnson v. Metropolitan Life Ins. Co.*, 22 N.W.2d 737, 71 S.D. 155.—*Waters* 119(3).

S.D. 1917. Under Laws 1907, c. 134, § 22, as amended by Laws 1909, c. 102, § 11, providing that owners of land may drain it in the general course of natural drainage into any natural water course or any natural depression whereby the water will be carried into some natural water course, a natural swale or depression into which plaintiff drained surface water was a "natural water course," as to constitute a water course as respects drainage, it is sufficient if the conformation of the land is such as to give the surface water flowing from one tract to another a fixed and determinate course so as to uniformly discharge it upon the servient tract at a fixed and definite point, and it is not necessary that the force of the water be sufficient to wear out a channel or canal having definite and well-marked sides or banks.—*Thompson v. Andrews*, 165 N.W. 9, 39 S.D. 477.

Tex.Civ.App.—Fort Worth 1950. The common idea of a "natural watercourse" is a river, stream or brook with permanent flow, but the legal meaning is not so confined, and legally there is a "natural watercourse" if there is a channel, consisting of a well-defined bed with visible banks, down which water flows recurrently, though it be dry for months at a time.—*Sun Underwriters Ins. Co. of N. Y. v. Bunkley*, 233 S.W.2d 153, writ refused.—*Waters* 38.

Tex.Civ.App.—Fort Worth 1950. Where topographical map showed that land sloped gently downward and beyond chicken houses in which chickens were drowned during heavy rainfall, and that drop was at the rate of four-tenths of a foot each 100 feet, and that at one end of chicken houses there was a slight depression some 8 to 10 feet across and seven-tenths of a foot in depth at its lowest point, there was no “natural watercourse”, and hence no recovery could be had for death of chickens under policy insuring against loss or damage from “flood” which the policy defined as meaning the rising of natural bodies of water.—Sun Underwriters Ins. Co. of N. Y. v. Bunkley, 233 S.W.2d 153, writ refused.—Insurance 2210.

Wash. 1963. “Natural watercourse,” insofar as riparian rights are concerned and as related in appropriate instances to drainage rights, is channel having bed, banks, or sides, and current in which waters, with some regularity, run in certain direction.—King County v. Boeing Co., 384 P.2d 122, 62 Wash.2d 545.—Waters 38, 119(3).

Wash. 1941. The fact that water course after passing onto adjoining owner's land spread out and formed a swamp for a short distance and then converged again into a channel did not deprive it of its character as a “natural water course.”—Alexander v. Muenschner, 110 P.2d 625, 7 Wash.2d 557.—Waters 38.

Wash. 1914. A channel in which water never flowed except when the ground was frozen and snows melted in the late winter or early spring, and then as mere surface drainage over an entire tract, occasioned by unusual freshets, was not a “natural water course.”—Thorpe v. City of Spokane, 139 P. 221, 78 Wash. 488.—Waters 38.

Wash. 1909. A water course with well-defined banks which is the natural outlet of lakes, and through which the waters will reach a common place, is a “natural water course,” though it is called a swag or a swamp or a creek, and whether its course is straight or crooked.—Hastie v. Jenkins, 101 P. 495, 53 Wash. 21.

Wash.App. Div. 1 1998. The fact that a water course spreads out and forms a swamp does not deprive it of its character as a “natural water course” for purposes of common enemy rule.—Snohomish County v. Postema, 978 P.2d 1101, 95 Wash.App. 817, review denied 994 P.2d 848, 139 Wash.2d 1011.—Waters 38.

W.Va. 1951. A “natural watercourse” consists of a bed, bank and water, and a stream in which water usually flows in a certain direction and by a regular channel with banks or sides is a “natural watercourse.”—McCausland v. Jarrell, 68 S.E.2d 729, 136 W.Va. 569, rehearing denied.—Waters 38.

W.Va. 1951. A natural watercourse implies a place of discharge and ordinarily empties into a river or another watercourse, but if a stream spreads out on land and there terminates, that fact does not deprive the part of the stream which flows regularly through the channel of its character as a “natural watercourse.”—McCausland v. Jarrell, 68

S.E.2d 729, 136 W.Va. 569, rehearing denied.—Waters 38.

W.Va. 1909. A “natural water course” is a natural stream flowing in a definite bed or channel with banks and sides, and having a permanent source of supply.—McHenry v. City of Parkersburg, 66 S.E. 750, 66 W.Va. 533, 29 L.R.A.N.S. 860.

Wis. 1923. A stream that usually flows in a particular direction, having a bed, sides, or banks, and discharging into some other stream or body of water, is a “natural water course.”—Williams v. Bass, 191 N.W. 499, 179 Wis. 364.—Waters 38.

NATURAL WATERCOURSE RULE

Cal.App. 4 Dist. 2000. At common law, the “natural watercourse rule” had two aspects: It first permitted the riparian landowner to gather surface waters and discharge them into the watercourse at a location other than that at which natural drainage would occur, and it also permitted the owner to make improvements in the bed of the stream to improve drainage and to protect the land from erosion by constructing dikes or embankments, and both types of activity were privileged even though the result would be to increase the volume and velocity that might damage the property of lower riparian owners.—Pacific Bell v. City of San Diego, 96 Cal.Rptr.2d 897, 81 Cal.App.4th 596.—Waters 40, 119(2).

NATURAL WATER COURSES

N.D.Miss. 1967. Under Mississippi law, three streams flowing onto landowners' property which had well-defined banks, beds of varying depth and width and through which surface water flowed for ultimate discharge in Mississippi River were “natural water courses” even though parts of the streams were sometimes dry.—Haisch v. Southaven Land Co., 274 F.Supp. 392.—Waters 38.

Neb. 1941. Where drainage ditches constructed and maintained by drainage district were artificial constructions, and waters contained in ditches had their sources in low-lying lands which, in the state of nature, were too wet to farm and over which surface waters were diffused and through which subterranean waters percolated, and there was uncontradicted evidence that for more than ten years there had been no “seeped” land within drainage district, waters in ditches were not subject to legal appropriation under Nebraska irrigation laws as waters of “natural streams” or “natural water courses” and hence an irrigation district's attempt to secure such waters by exercise of right of eminent domain was unauthorized. Laws 1880, c. 68, art. 1, § 1; Laws 1895, c. 69, §§ 42, 43; Laws 1919, c. 190, tit. 7, art. 5, div. 1, § 1 et seq.; Comp.St.1929, § 31-401 et seq.; Const. art. 15, §§ 4-6.—Drainage Dist. No. 1 of Lincoln County v. Suburban Irr. Dist., 298 N.W. 131, 139 Neb. 460.

NATURAL WEAR AND TEAR

Mo.App. 1909. A lease by which the lessee not only agreed to exercise every precaution in the use of the leased machinery, but agreed to assume all

cost of repairs, and, at expiration of the term, turn over the machinery and equipment in perfect condition, "saving natural wear and tear," required the lessee to make whole damage to machinery resulting from accidents, like the fracture of an engine shaft, though not resulting from its negligence; "natural wear and tear" signifying wear resulting from friction and the gradual tearing apart of joints, rivets, and other portions in the operation of the machinery.—*Peper v. St. Louis Brass Mfg. Co.*, 123 S.W. 1012, 146 Mo.App. 187.—*Land & Ten* 160(4).

NATURAL WOOD

C.C.A.3 (Del.) 1933. Patent 1,663,505, product claims 5, 6, and process claims 14, 16, 20, 23, concerning production of hard board from "wood" or "woody material", held infringed by use of bagasse; bagasse being "woody material" and not being "straw" within patentee's disclaimer. Following an opening sentence of specification that ligno-cellulose materials, such as wood and the like, were adapted for use in making products covered by patent, claims disclosed product and method of making it of wood or woody material. The words "ligno-cellulose materials, such as wood", mean natural wood, i.e., tree wood, and the words "and the like" mean something like wood with its ligno-cellulose quality. Likewise, the word "wood" means "natural wood" which in turn means tree wood, and the words "woody material" mean something other than tree wood, yet something which like tree wood has fiber in quantity and quality that will produce product of patent involved by its process. Hence the expression "wood or woody material" covers any wood or woody material which yields wood fiber in kind and quantity that will produce article with characteristics disclosed by patent when made by process of such patent.—*Masonite Corporation v. Celotex Co.*, 66 F.2d 451, certiorari dismissed 54 S.Ct. 93, 290 U.S. 708, 78 L.Ed. 608.—*Pat* 328.

NATURAL ZONE OF EXPANSION

D.Del. 1994. Mere hope of expansion is not enough to entitle senior user of trade or service mark to exclusive use rights under "natural zone of expansion" doctrine.—*ACCU Personnel, Inc. v. AccuStaff, Inc.*, 846 F.Supp. 1191.—*Trade Reg* 472.

W.D.Pa. 1999. Under the "natural zone of expansion" theory, if at the time a junior service mark user first used mark, it did so within senior user's "natural zone of expansion," senior user will prevail in trademark infringement action. *Lanham Trade-Mark Act*, § 43(a), 15 U.S.C.A. § 1125(a).—*Laurel Capital Group, Inc. v. BT Financial Corp.*, 45 F.Supp.2d 469.—*Trade Reg* 67.

NATURE

U.S.Mo. 1942. A rate structure found to involve serious discriminations among shippers, carriers and transit points alike is not a manifestation of "nature" beyond power of Interstate Commerce Commission to repair, on theory that natural competitive advantages should not be interfered with. *Hoch-Smith Resolution*, 49 U.S.C.A. § 55; *Inter-*

state Commerce Act, §§ 1(5), 2, 3(1), 49 U.S.C.A. §§ 1(5), 2, 3(1).—*Board of Trade of Kansas City, Mo. v. U.S.*, 62 S.Ct. 366, 314 U.S. 534, 86 L.Ed. 432, rehearing denied 62 S.Ct. 621, 315 U.S. 826, 86 L.Ed. 1222.—*Commerce* 85.16.

Ala. 1917. The word "nature" in Const. § 285, requiring ballot on constitutional amendment proposed by Legislature to contain substance of amendment so as to indicate its nature, means kinds, species, character, or sort.—*Jones v. McDade*, 75 So. 988, 200 Ala. 230.—*Const Law* 9(1).

Ill.App. 4 Dist. 1966. Word "nature" as used in Rule requiring that defendant be advised of nature of charge against him and consequences thereof if found guilty connotes and is synonymous with words essence, general character, kind or sort. Supreme Court Rules, rule 26(3), S.H.A. ch. 110, § 101.26(3).—*People v. Harden*, 222 N.E.2d 693, 78 Ill.App.2d 431, affirmed 232 N.E.2d 725, 38 Ill.2d 559.—*Crim Law* 264.

Ky. 1996. Testimony by victim of prior crime about specifics of the assault, including nature of injuries inflicted and defendant's act of forcing victim to lie to emergency room personnel, was inadmissible under Truth-in-Sentencing statute permitting evidence of nature of prior offenses for which defendant was convicted; "nature" is more generic than specific and refers to kind, sort, type, order, or general character, and testimony was much more than simple description of domestic violence or description of general character and was not about "nature of prior offenses." *KRS* 532.055(2)(a).—*Robinson v. Com.*, 926 S.W.2d 853, rehearing denied.—*Sent & Pun* 313.

La. 1933. "Nature," in act authorizing attachment of property of defendant not domiciled in state, regardless of nature of plaintiff's claim, enlarges right of attachment to embrace every description of legal demand for money, whether arising ex contractu, quasi ex contractu, or from tort. *Act No. 220 of 1932*; *Code Prac.* art. 242; *Act No. 215 of 1920*.—*Jackson State Nat. Bank of Jackson, Miss. v. Merchants' Bank & Trust Co. of Jackson, Miss.*, 149 So. 539, 177 La. 975.—*Attach* 4.

Mich. 1929. Under Pub. Acts 1927, No. 175, c. 7, § 44, requiring the prosecuting attorney if seasonably requested to furnish a bill of particulars setting up specifically the nature of the offense charged, the word "nature," although its use is not happy, must be deemed to contemplate a specific statement in appropriate instances of the means, manner, or method adopted or employed, by defendant, or, in other words, what acts of his are asserted to constitute the crime.—*People v. Margelis*, 224 N.W. 605, 246 Mich. 459.

Minn. 1895. "Nature," as used in regard to the nature of an obligation, means those qualities which inhere in and pertain to it—such as whether it is joint, or joint and several.—*Schultz v. Howard*, 65 N.W. 363, 63 Minn. 196, 56 Am.St.Rep. 470.

Nev. 1897. "Nature" is defined as meaning sort, kind, character, or species, and is so used in a

statute requiring a recognizance in a criminal case to state the nature of the offense of which the principal is charged.—*State v. Murphy*, 48 P. 628, 23 Nev. 390.

N.H. 1989. Applicant granted certificate of need for 100 bed comprehensive acute physical rehabilitation facility which would include treatment of head injuries did not substantially change "nature," "scope," or "location," of proposed project by deciding to build project at hospital in Concord, rather than at Allenstown site, and thus, applicant was not required to obtain approval of Health Services Planning and Review Board before changing site of project. RSA 151-C:1 et seq., 151-C:1, subd. 1, 151-C:2, subd. 23-a, 151-C:8, subds. 1, 4, 12(b, c), 151-C:12, subds. 1(b)(2), 4, 151-C:14.—*Appeal of Rehabilitation Associates of New England*, 556 A.2d 1183, 131 N.H. 560.—*Health* 237.

N.J. 1999. Knowledge of the "nature" of a disability includes knowledge that the injury is compensable for purposes of statute providing that workers' compensation claim must be filed within two years after the date on which claimant first knew the nature of the disability and its relation to the employment. N.J.S.A. 34:15–34.—*Earl v. Johnson & Johnson*, 728 A.2d 820, 158 N.J. 155.—*Work Comp* 1207.

N.Y. 1949. An "occupational disease" is one which results from nature of employment, and by "nature" is meant conditions to which all employees of a class are subject and which produce disease as natural incident of particular occupation as distinguished from and exceeding the hazard and risks of ordinary employment. *Workmen's Compensation Law*, § 3, subd. 2, and par. 28, § 39.—*Champion v. W. & L. E. Gurley*, 87 N.E.2d 430, 299 N.Y. 406.—*Work Comp* 548.

N.Y. 1948. An "occupational disease" is one which results from the nature of the employment, and by "nature" is meant conditions to which all employees of a class are subject, and which produce the disease as a natural incident of a particular occupation and attach to that occupation a hazard which distinguishes it from the usual run of occupations and is in excess of the hazard attending employment in general. *Workmen's Compensation Law*, § 37 et seq.—*Harman v. Republic Aviation Corporation*, 82 N.E.2d 785, 298 N.Y. 285.—*Work Comp* 548.

N.Y.A.D. 3 Dept. 1958. An "occupational disease", which is compensable, is one which results from nature of employment, and by "nature" is meant conditions to which all employees of a class are subject, and which produce the disease as a natural incident of a particular occupation, and attach to that occupation a hazard which distinguishes it from usual run of occupations and is in excess of the hazard attending employment in general.—*Newton v. Erie County*, 180 N.Y.S.2d 163, 7 A.D.2d 29.—*Work Comp* 548.

N.D. 1967. Under relative-"nature"-of-the-work test, worker is engaged in "employment," within meaning of *Workmen's Compensation Act*, when

the work being done is an integral part of the regular business of the employer and when the worker, relative to the employer, does not furnish an independent business or professional service.—*Brown v. North Dakota Workmen's Compensation Bureau*, 152 N.W.2d 799.—*Work Comp* 310.

Okla. 1913. Within section 3537, St.1890, section 4027, Rev.Laws 1910, 46 Okl.St. Ann. § 53, requiring the notice of sale in the foreclosure of a chattel mortgage to state the "nature of the default," the word "nature" means the sum of qualities and attributes which make a thing what it is, as distinct from others, and the phrase "nature of the default" includes those qualities and attributes which make it distinct from other characters of default.—*Fitch v. Green*, 134 P. 34, 39 Okla. 18, 1913 OK 438, 1913 OK 439.—*Chat Mtg* 260.

Okla. 1911. A requirement that the voter be apprised of the "nature" of a public utility means that the ballot title shall be in specific language notify him only of the kind, sort, or character of such public utility. A ballot title reading, "Shall the city of W. * * * incur an indebtedness * * * for an electric plant in and to be owned exclusively by said city? * * *" was sufficient to apprise the voter of the nature of such utility, within the contemplation of Okl.St. Ann. Const. art. 10, § 27, as construed in *Coleman v. Frame*, 109 P. 928, 26 Okl. 193, 31 L.R.A., N.S., 556, wherein it is stated that the proposition submitted "must be stated in such specific language as to apprise the voter of the 'nature' of the specific utility the city wishes to purchase, construct, or repair."—*City of Woodward v. Raynor*, 119 P. 964, 29 Okla. 493, 1911 OK 343.

Okla.Crim.App. 1994. Use of word "nature" in portion of statute governing competency to stand trial referring to accused's understanding of nature of charges and proceedings, did not give rise to standard of competency which differed from or which was lower than that required under Federal Constitution; rather, understanding of "nature" of charges and proceedings meant the same thing as "rational understanding." U.S.C.A. Const.Amend. 6; 22 Okl.St. Ann. § 1175.1.—*Lambert v. State*, 888 P.2d 494, 1994 OK CR 79, rehearing denied, appeal after remand 984 P.2d 221, 1999 OK CR 17, rehearing denied, certiorari denied 120 S.Ct. 816, 528 U.S. 1087, 145 L.Ed.2d 687.—*Mental H* 432.

Tex.Civ.App.—Dallas 1916. Within *Vernon's Ann.Civ.St. art. 269*, requiring filing with assignee for benefit of creditors by a creditor of a distinct statement of the "particular nature" and amount of his claim, "particular" means special, not general, and does not require an itemized statement, and "nature" has reference to the kind, quality, sort or species of claim; and it is enough to disclose that it is for legal services.—*Lang v. Collins*, 190 S.W. 784.

Tex.Civ.App. 1896. Where the only description of the nature of plaintiff's demand contained in the citation was, "Suit, trespass to try title and remove cloud from title, cancel deed, and for damages," the motion to quash the citation should be granted. The citation merely gives the class to which the suit belongs, but does not distinguish it from any other

suit for land or to cancel deed, and hence does not disclose the nature of the particular demand made. The dictionary defines "nature" to be the sum of qualities and attributes which make a thing what it is, as distinct from others, while it defines "class" to be an order or division of animate or inanimate objects grouped together on account of their common characteristics.—*Ford v. Baker*, 33 S.W. 1036.

Utah App. 1998. Notice of default in connection with nonjudicial power of sale foreclosure proceedings sufficiently described the "nature" of trust deed trustor's breach, within meaning of notice statute, as the notice described the sort, type, or essential character of the breach by stating that trustor "failed to make the monthly payments as provided in the Trust Deed Note," though the notice did not state particular amounts or payments. U.C.A.1953, 57-1-24(1).—*Nyman v. McDonald*, 966 P.2d 1210.—Mtg 335.

Wash. 1974. Business and occupation privilege tax imposed by municipality on corporate taxpayer engaged in wholesale distribution of cigarettes was not in same "nature" as state excise tax on cigarettes, and doctrine of preemption was not applicable, where business and occupation tax was a levy against those persons engaging in activity of making sales at wholesale, so that broad category of wholesalers was being taxed, and nature of product being sold at wholesale was immaterial. RCWA 28A.47.440, 73.32.130, 82.24.020, 82.24.030, 82.24.080.—*P. Lorillard Co. v. City of Seattle*, 521 P.2d 208, 83 Wash.2d 586.—Mun Corp 966(9).

NATURE AND CAUSE OF ACCUSATION

Ind. 1928. Under Const. art. 1, § 13, entitling defendant to demand "nature and cause of accusation" against him and to have copy thereof, defendant is entitled to have gist of offense charged in direct and unmistakable terms.—*Large v. State*, 164 N.E. 263, 200 Ind. 430.

R.I. 1937. Constitutional provision requiring indictment to inform accused of "nature and cause of accusation" means that indictment to be valid must at least fully and plainly identify the offense, so that defendant may defend properly and later plead a conviction or acquittal in bar of a subsequent charge for the same offense, and so that court may pronounce sentence on conviction according to the right of the case. Const. art. 1, § 10.—*State v. Domanski*, 190 A. 854, 57 R.I. 500.—Ind & Inf 56.

NATURE AND CAUSE OF THE ACCUSATION

Ind. 1919. The words "nature and cause of the accusation" in Const. Bill of Rights, art. 1, § 13, providing that an accused shall have the right to demand the nature and cause of the accusation against him, mean that the gist of an offense shall be charged in direct and unmistakable terms.—*Hinshaw v. State*, 122 N.E. 418, 188 Ind. 147.—Ind & Inf 70.

NATURE AND CIRCUMSTANCES

Ind. 2000. "Nature and circumstances" of a crime is a proper aggravator; while a trial court may

not use a factor constituting a material element of an offense as an aggravating circumstance, a court may look to the particularized circumstances of the criminal act. West's A.I.C. 35-38-1-7.1.—*Bonds v. State*, 729 N.E.2d 1002, rehearing denied.—Sent & Pun 50, 138.

NATURE AND CIRCUMSTANCES OF THE CRIME

Tenn. 1998. Statute allowing presentation of evidence of "nature and circumstances of the crime" during penalty phase of capital murder trial authorizes introduction of victim impact evidence. T.C.A. § 39-13-204(c).—*State v. Burns*, 979 S.W.2d 276, certiorari denied 119 S.Ct. 2402, 527 U.S. 1039, 144 L.Ed.2d 801.—Sent & Pun 1763.

NATURE AND EXTENT OF THE INJURY SUSTAINED

Ky. 1919. Notice to employer of "nature and extent of the injury sustained," under Ky.St.Supp. 1918, §§ 4914, 4915, need not give a full or exact description of the injury, in view of section 4917; notice giving employer such knowledge as will enable him to provide the necessary medical or other attention that the nature or extent of the injury demands being sufficient.—*Bates & Rogers Const. Co. v. Allen*, 210 S.W. 467, 183 Ky. 815.—Work Comp 1224.

NATURE OF A DEBT

Bkrtcy.D.Conn. 1990. For mortgage to be valid under Connecticut common law, at minimum, nature and amount of encumbrance must be disclosed; "nature of a debt" is determined by factors such as whether it is absolute or contingent, liquidated or unliquidated, or existing liability rather than future advance, while amount is simply dollar value of obligation secured.—*In re Schreier*, 111 B.R. 25.—Mtg 50.

NATURE OF ALIMONY

N.D.Ill. 1981. Bankrupt husband's obligation to pay attorney fees of wife's divorce counsel was in the "nature of alimony" and was nondischargeable, notwithstanding that divorce court ordered the fees paid directly to counsel. Bankr.Act, §§ 1 et seq., 17(a)(7), 11 U.S.C.A. §§ 1 et seq., 35(a)(7); Bankr. Code, 11 U.S.C.A. §§ 101 et seq., 523(a), (a)(5), (a)(5)(A); Ill.S.H.A. ch. 40, § 508(b).—*Richards v. Loncar*, 14 B.R. 276.—Bankr 3360.

NATURE OF AN ACT

Pa. 1990. For purposes of insanity test, focusing on defendant's ability to understand nature and quality of his acts, "nature of an act" refers to whether act is right or wrong, while "quality of an act" refers to whether act is likely to cause death or injury.—*Com. v. Young*, 572 A.2d 1217, 524 Pa. 373, appeal after remand 637 A.2d 1313, 536 Pa. 57, certiorari denied *Young v. Pennsylvania*, 114 S.Ct. 1389, 511 U.S. 1012, 128 L.Ed.2d 63.—Crim Law 48.

NATURE OF EMPLOYMENT

Ga.App. 1949. Phrase “nature of employment”, in provision of Compensation Law respecting liability of employer for compensation for silicosis, means that, to occupation in which employee was engaged, there is attached particular hazard of silicosis, distinguishing it from usual run of occupations, and in excess of hazard attending employment in general. Ga.Code Ann. § 114-801.—Free v. Associated Indem. Corp., 52 S.E.2d 325, 78 Ga.App. 839.—Work Comp 622.

N.Y.A.D. 3 Dept. 1953. When used in connection with statute awarding compensation for occupational diseases, “nature of employment” means conditions to which all employees of a class are subject.—Griffin v. Griffin & Webster, Inc., 126 N.Y.S.2d 672, 283 A.D. 145.

NATURE OF INDUSTRY

E.D.Wis. 1994. For purpose of imposing post-sale duty to warn on manufacturer, manufacture and marketing of anesthesia machines was conducted in narrow industry and market, and thus could satisfy “nature of industry” element for imposing post-sale duty to warn on manufacturer.—Olsen by Olsen v. Ohmeda, Div. of Boc Group, Inc., 863 F.Supp. 870, affirmed Wisconsin Health Care Liability Ins. Plan v. Ohmeda, a Div. of BOC Group, Inc., 77 F.3d 485.—Prod Liab 46.1.

NATURE OF INTEREST

Mo.App. 1968. Statutory award in “nature of interest” in trover for wrongful conversion is an admeasurement of damages at ruling rate of interest, not as interest, but by way of compensatory damages. Section 537.520 RSMo 1959, V.A.M.S.—Commercial Credit Corp. v. Joplin Auto. Auction Co., 430 S.W.2d 440.—Trover 53.

NATURE OF OBLIGATION

E.D.La. 1966. Red letter clause providing that repairer's liability to shipowner for damages should not exceed \$300,000 constituted defense resulting from “nature of obligation” within Louisiana statute permitting codebtor in solido sued by creditor to plead all exceptions resulting from nature of obligation, and the limitation of liability defense inured to benefit of repairer's insurers. LSA-R.S. 22:655; LSA-C.C. art. 2098.—Alcoa S. S. Co. v. Charles Ferran & Co., 251 F.Supp. 823, affirmed 383 F.2d 46, certiorari denied 89 S.Ct. 111, 393 U.S. 836, 21 L.Ed.2d 107.—Insurance 3458(3).

NATURE OF PRIOR OFFENSES

Ky. 1996. Testimony by victim of prior crime about specifics of the assault, including nature of injuries inflicted and defendant's act of forcing victim to lie to emergency room personnel, was inadmissible under Truth-in-Sentencing statute permitting evidence of nature of prior offenses for which defendant was convicted; “nature” is more generic than specific and refers to kind, sort, type, order, or general character, and testimony was much more than simple description of domestic

violence or description of general character and was not about “nature of prior offenses.” KRS 532.055(2)(a).—Robinson v. Com., 926 S.W.2d 853, rehearing denied.—Sent & Pun 313.

NATURE OF THE ALLEGATIONS TEST

S.D. 1996. When assessing complaint which alleges claims involving various limitation periods, it is necessary to apply “nature of the allegations test” to determine which period applies; under test, court looks at nature of allegations in complaint, and if there is any doubt as to which statute applies, such doubt should be resolved in favor of longer limitation period. (Per Miller, C.J., with one Justice concurring and one Justice concurring in part and concurring in the result).—Rehm v. Lenz, 547 N.W.2d 560, 1996 SD 51.—Lim of Act 16.

NATURE OF THE CAUSE

Fla.App. 3 Dist. 1963. Phrase “nature of the cause” within Rule of Civil Procedure requiring that complaint inform defendant of “nature of the cause” against him refers to cause of action cognizable under the law, and, therefore, complaint must allege a cause of action recognized under law against defendants.—Naples Builders Supply Co. v. Clutter Const. Corp., 152 So.2d 478.—Plead 48.

NATURE OF THE CHARGE

C.A.2 (N.Y.) 2001. As used in rule requiring that defendant be fully informed as to the nature of the charge to which his guilty plea is offered, term “nature of the charge” refers to the elements of the offense, and does not encompass possible defenses to the charge. Fed.Rules Cr.Proc.Rule 11(c)(1), 18 U.S.C.A.—U.S. v. Calderon, 243 F.3d 587, certiorari denied 121 S.Ct. 2616, 533 U.S. 960, 150 L.Ed.2d 770.—Crim Law 273.1(4).

NATURE OF THE CONDUCT

Tex.App.—Corpus Christi 1989. Crime of aggravated sexual assault of child under 14 years of age was a “result” rather than “nature of the conduct” type offense, with respect to intent and knowledge required, and therefore “nature of the conduct” instructions were not required. V.T.C.A., Penal Code §§ 6.03, 22.021(a)(1), (a)(2)(B).—Saldivar v. State, 783 S.W.2d 265.—Crim Law 814(6); Infants 20.

NATURE OF THE DEFAULT

Okla. 1913. Within section 3537, St.1890, section 4027, Rev.Laws 1910, 46 Okl.St.Ann. § 53, requiring the notice of sale in the foreclosure of a chattel mortgage to state the “nature of the default,” the word “nature” means the sum of qualities and attributes which make a thing what it is, as distinct from others, and the phrase “nature of the default” includes those qualities and attributes which make it distinct from other characters of default.—Fitch v. Green, 134 P. 34, 39 Okla. 18, 1913 OK 438, 1913 OK 439.—Chat Mtg 260.

NATURE OF THE FACTS TO WHICH THEY TESTIFIED

Ga.App. 1948. Where court in charge gave provisions of statute enumerating what jury may consider in determining where preponderance of evidence lies, phrase “nature of their testimony” was substantially synonymous with statutory authorization to consider the “nature of the facts to which they testified” and use in charge of first-quoted phrase was not prejudicial to defendant. Code, § 38-107.—Georgia Automatic Gas Co. v. Fowler, 49 S.E.2d 550, 77 Ga.App. 675.—App & E 1064.4; Trial 228(4).

NATURE OF THEIR TESTIMONY

Ga.App. 1948. Where court in charge gave provisions of statute enumerating what jury may consider in determining where preponderance of evidence lies, phrase “nature of their testimony” was substantially synonymous with statutory authorization to consider the “nature of the facts to which they testified” and use in charge of first-quoted phrase was not prejudicial to defendant. Code, § 38-107.—Georgia Automatic Gas Co. v. Fowler, 49 S.E.2d 550, 77 Ga.App. 675.—App & E 1064.4; Trial 228(4).

NATURE OF THE PREVIOUS CONVICTION

Ark. 1996. Testimony from victim of prior crime is inadmissible on sentencing issue; “nature of the previous conviction” within meaning of statute permitting consideration of prior convictions in sentencing and permitting jury to be advised as to nature of the previous convictions refers to nature or general character of that conviction, and statute is satisfied by certified copy of the information and judgment of conviction. A.C.A. § 16-97-103(2).—Rush v. State, 919 S.W.2d 933, 324 Ark. 147.—Sent & Pun 313, 318.

NATURE OF THE PROCEEDINGS

Or.App. 2000. Requirement that trial court advise person against whom an order of involuntary commitment is sought of the “nature of the proceedings” means that trial court must advise that person of the essence or the essential character of the hearing that it is about to conduct. ORS 426.100(1)(b).—State v. Buffum, 999 P.2d 541, 166 Or.App. 552, review allowed State v. Buffum, 19 P.3d 354, 331 Or. 361, review dismissed as improvidently granted by 61 P.3d 938, 335 Or. 142.—Mental H 39.

Or.App. 2000. Requirement that trial court advise person who was subject of involuntary commitment petition of the “nature of the proceedings” was discharged by advising that person that a hearing would be held to determine whether or not she was mentally ill, and did not require advisements as to the legal and evidentiary standards that would apply at hearing. ORS 426.005(1)(d), 426.100(1)(b).—State v. Buffum, 999 P.2d 541, 166 Or.App. 552, review allowed State v. Buffum, 19 P.3d 354, 331 Or. 361, review dismissed as improvidently granted by 61 P.3d 938, 335 Or. 142.—Mental H 39.

NATURE OF THE RELIEF

E.D.Pa. 1995. There are two schools of thought regarding the proper way to determine whether plaintiff's federal court complaint is inextricably intertwined with state court adjudication for purposes of *Rooker-Feldman* doctrine which provides that federal district courts lack jurisdiction to evaluate constitutional claims that are inextricably intertwined with final state court adjudications: (1) under the “jurisdictional *res judicata*” school, claims that were raised or could have been raised in state court are barred as long as there was full and fair opportunity to raise such claims and (2) under the “nature of the relief” school, court looks at content of federal court complaint.—Kirby v. City of Philadelphia, 905 F.Supp. 222.—Courts 509; Judgm 828.16(1), 828.16(3).

NATURE OF THE SERVICES TEST

Cal.App. 1 Dist. 1993. Under the “nature of the services test” court inquires as to whether nature of services contracted to private firms for provision of state services is such that they could have been performed by civil servant; if so, agency must proceed under civil service mandate. West's Ann.Cal. Const. Art. 7, §§ 1 et seq., 1(a, b).—Professional Engineers v. Department of Transportation, 16 Cal. Rptr.2d 599, 13 Cal.App.4th 585, review denied.—Offic 11.8; States 100.

NATURE OF THE WORK TEST

Or.App. 1996. Under “nature of the work test,” a worker whose services are regular and continuing part of cost of a product and whose method of operation is not so independent that it forms a separate route through which costs of industrial accident can be channeled, is presumptively a “worker” subject to Workers' Compensation Law. ORS 656.001 et seq.—Trabosh v. Washington County, 915 P.2d 1011, 140 Or.App. 159.—Work Comp 108.

NATURE OF THE WRONG

Tex.App.—Dallas 1996. For purposes of determining whether punitive damage award is excessive by considering “nature of the wrong,” nature of the wrong refers to the nature of injury or harm caused by defendant's actions.—Ellis County State Bank v. Keever, 936 S.W.2d 683.—Damag 94.

NATURE-ORIENTED

Tex.App.—San Antonio 1996. When specific act as criminalized because of its very nature, culpable mental state applies to committing the act itself, and, thus, offense is “nature-oriented”; conversely when unspecified conduct is criminalized because of its result, culpable mental state applies to the result, and offense is called “result-oriented”. V.T.C.A., Penal Code § 6.03.—Herrera v. State, 915 S.W.2d 94.—Crim Law 20.

NATUROPATHIC PHYSICIAN

S.C. 1947. Practitioner who was practicing the profession of naturopathy within the statutory field

of that profession and was presumably licensed was a "naturopathic physician" within the applicable statutes. Code 1942, §§ 5162, 5231-19 et seq., 5231-20, 5231-23 et seq., 5231-25, 5231-27.—*Williams v. Capital Life & Health Ins. Co.*, 41 S.E.2d 208, 209 S.C. 512.—Health 175.

NATUROPATHY

S.D.Fla. 1938. Naturopathic physicians licensed under the Florida statutes are not "physicians or other practitioners" within the Harrison Narcotic Act providing that "physicians and other practitioners" lawfully entitled to distribute, dispense, give away, or administer narcotic drugs are entitled to register with the collector of internal revenue and receive a special stamp and order forms to be used in the purchase of narcotics, in view of the fact that the Florida statute does not regard "naturopathy" as a practice of "materia medica" but authorizes licensees thereunder to practice the art of healing only in the "naturopathy" field. *Harrison Narcotic Act* § 1(d), 26 U.S.C.A. § 1383(d); *F.S.A.* §§ 398.02, 462.01 et seq.—*Perry v. Larson*, 25 F.Supp. 728, affirmed 104 F.2d 728.—Int Rev 5259.

Ariz. 1951. By statutory definition confining "naturopathy" to use of "drugless and nonsurgical methods" Legislature intended to prevent naturopaths from doing two things for which by training they are not qualified, viz., prescribing drugs and performing surgical operations, and term "drugless method" was not used in a merely descriptive sense relating only to general practices but was intended to qualify and limit practice of naturopathy. *A.C.A.* 1939, §§ 67-1205, 67-1207 (*A.R.S.* §§ 32-1501, 32-1522).—*Kuts-Cheraux v. Wilson*, 229 P.2d 713, 71 Ariz. 461, on rehearing 230 P.2d 512, 72 Ariz. 37.—Health 175.

Cal.App. 2 Dist. 1952. The word "naturopathy", with relation to practices permitted by licensees other than naturopath, means merely the employment of drugless methods commonly used by naturopaths.—*Oosterveen v. Board of Medical Examiners*, 246 P.2d 136, 112 Cal.App.2d 201.

Cal.App. 2 Dist. 1922. "Naturopathy" is a process or system whereby remedies for disease are discovered and whereby they are applied to the healing of disease.—*In re Gerber*, 206 P. 1004, 57 Cal.App. 141.—Health 175.

Ind. 1943. "Naturopathy" is a system of physical culture and drugless treatment of disease by methods supposed to simulate or assist nature.—*State Board of Medical Registration and Examination v. Scherer*, 46 N.E.2d 602, 221 Ind. 92.

S.C. 1947. "Naturopathy" is one of a number of fields in the art of healing which have been so far recognized by General Assembly as accepted processes of preventative and curative medicine that stringent educational and licensing provisions have been imposed.—*Williams v. Capital Life & Health Ins. Co.*, 41 S.E.2d 208, 209 S.C. 512.

Wyo. 1958. "Naturopathy" is one of the methods of practicing medicine and is not a separate science, distinct from the practice of medicine, and

therefore defendant, who professed to be a doctor of naturopathy, and who had no license to practice, was guilty of practicing medicine without a license when he practiced naturopathy. *W.C.S.* 1945, §§ 37-2007, 37-2014.—*Hahn v. State*, 322 P.2d 896, 78 Wyo. 258.—Health 175.

NAUSEA

Wis. 1954. "Nausea" is any sickness of the stomach, like seasickness, with a desire to vomit.—*Brouwer Realty Co. v. Industrial Commission*, 62 N.W.2d 577, 266 Wis. 73.

NAVAL

Ct.Cl. 1946. The words "military" and "naval", within Transportation Act of 1940 providing for reduced rates to United States over land grant railroads on shipments of military or naval property being transported for military or naval "and not for civil use", are mutually exclusive and use of last-quoted phrase expresses intention that no construction shall be given term "military" that will include idea of civil use, and hence term "military" must be given a strict construction. *Transportation Act of 1940*, § 321, 49 U.S.C.A. § 65.—*Southern Pacific Co. v. U.S.*, 67 F.Supp. 966, 107 Ct.Cl. 167, certiorari denied 67 S.Ct. 964, 330 U.S. 833, 91 L.Ed. 1381.—Pub Lands 85.

N.D.Cal. 1946. The words "military" and "naval", as used in Transportation Act of 1940 providing for reduced rates to United States over land grant railroads on shipments of military or naval property being transported for military or naval use, are descriptive adjectives, and in context they may refer to property of War or Navy Departments, but they also properly are descriptive, irrespective of ownership, of nature of the property itself with respect to nature of its contemplated use. *Transportation Act of 1940*, § 321, 49 U.S.C.A. § 65.—*Southern Pac. Co. v. Defense Supplies Corp.*, 64 F.Supp. 605, affirmed 161 F.2d 56.—Pub Lands 85.

W.D.Wis. 1946. "Naval" means of or pertaining to ships or shipping; of or pertaining to or connected with, or possessing characteristics of vessels of war or a navy.—*Northern Pac. Ry. Co. v. U.S.*, 64 F.Supp. 1, affirmed 156 F.2d 346, certiorari granted 67 S.Ct. 96, 329 U.S. 701, 91 L.Ed. 611, affirmed 67 S.Ct. 747, 330 U.S. 248, 91 L.Ed. 876.

NAVAL FORCES

C.C.A.2 (Conn.) 1948. The fleet reserve, composed of trained personnel who are paid on basis of their length of service and remain subject to call to active duty, is included in the term "naval forces" appearing in provision of the Fifth Amendment excluding cases arising in land and "naval forces" from requirement of presentment or indictment by grand jury. *Naval Reserve Act of 1938*, §§ 1, 5, 6, 10 U.S.C.A. §§ 261 et seq., 671 et seq., 1201 et seq.; *U.S.C.A. Const. Amend. 5*.—*U.S. ex rel. Pasela v. Fenno*, 167 F.2d 593, certiorari granted 68 S.Ct. 1530, 334 U.S. 857, 92 L.Ed. 1777, certiorari dismissed 69 S.Ct. 29, 335 U.S. 806, 93 L.Ed. 363.—Ind & Inf 2(2).

N.D.Cal. 1944. A native of the Philippines who was serving honorably as a temporary member of the United States Coast Guard Reserve, though performing only part-time service, was serving honorably in the "naval forces" of the United States, so as to be entitled to citizenship. Nationality Act of 1940, § 701, as amended, 50 U.S.C.A. Appendix § 640; 14 U.S.C.A. §§ 301, 302, 304, 307; Executive Order Nov. 1, 1941, No. 8929, 14 U.S.C.A. § 1 note.—Petition of Delgado, 57 F.Supp. 460.—Aliens 65.

N.J.Super.A.D. 1948. Insured who was a V-12 student under Navy College Program when killed in an automobile accident in January, 1945, was a member of "naval forces" within life policy excepting from double indemnity benefit death resulting while insured was in naval forces of any country at war, notwithstanding that V-12 students did not occupy in all respects same status as ordinary persons in the Navy. Servicemen's Readjustment Act of 1944, 38 U.S.C.A. § 693 et seq.—Feick v. Prudential Ins. Co. of America, 62 A.2d 485, 1 N.J.Super. 88.—Insurance 2587.

NAVAL JURISDICTION

E.D.Va. 1943. The proviso of Article of War relating to persons subject to military law that nothing in the chapter should be construed to apply to any person under the United States "naval jurisdiction", etc., was merely intended to preclude the operation simultaneously of army and navy court-martial jurisdiction, and the only persons excepted by the proviso are those who are subject to the Articles for the Government of the Navy. Articles of War, art. 2, 10 U.S.C.A. § 801 et seq.—McCune v. Kilpatrick, 53 F.Supp. 80.—Armed S 44(2).

E.D.Va. 1943. A civilian chief cook on board vessel within continental limits of the United States before departure to transport troops overseas during existing war was not subject to naval court-martial jurisdiction within proviso of Article of War that nothing in chapter should be construed to apply to any person under the United States "naval jurisdiction". 5 U.S.C.A. §§ 597, 597a; 14 U.S.C.A. §§ 1, 3, 5; Articles of War, art. 2, 10 U.S.C.A. § 1473; Articles for the Government of the Navy, 34 U.S.C.A., §§ 1200, 1201, 46 U.S.C.A. §§ 1, 2, 701; Executive Order of March 1, 1942, No. 9083, 50 U.S.C.A. Appendix § 601 note.—McCune v. Kilpatrick, 53 F.Supp. 80.—War 32.

NAVAL RESERVATION

C.A.2 (Conn.) 1991. Water surrounding dry-land naval installation constituted "naval reservation" within meaning of statute prohibiting entry for unlawful purpose where waters were designated "security zone" by federal regulation. 18 U.S.C.A. § 1382.—U.S. v. Allen, 924 F.2d 29.—Armed S 40(5).

NAVAL STORES

Fla. 1908. In Florida, where the production of spirits of turpentine and rosin, otherwise known as "naval stores," constitutes one of the leading industries, courts will take judicial notice that such naval

stores are the manufactured products of the gum extracted from pine trees that constitute the chief timber growing on large areas of the state, and that the crude gum so extracted in its unmanufactured state is popularly known as and called "Dip," from the fact of its being collected by being dipped up from receptacles called "boxes" cut into the growing pine trees near the ground.—Knight v. Empire Land Co., 45 So. 1025, 55 Fla. 301.—Evid 5(2).

NAVIGABILITY

U.S.Ill. 1921. The test of "navigability" is whether the stream in its natural state is used or capable of being used as a highway for commerce over which trade and travel is or may be conducted in the customary modes of trade and travel on water, and navigability is not destroyed by natural obstructions or portages, or because navigation is not open at all seasons of the year or at all stages of the water.—Economy Light & Power Co. v. U.S., 41 S.Ct. 409, 256 U.S. 113, 65 L.Ed. 847.—Nav Wat 1(3).

C.A.D.C. 2002. Evidence of actual use is not necessary for a determination of "navigability" of stream upon which hydroelectric project is located, for purpose of licensing requirements of Federal Power Act (FPA); test is whether stream is used, or capable of being used, as highway for commerce, over which trade and travel is, or may be, conducted in customary modes of trade and travel on water. Federal Power Act, § 3(8), as amended, 16 U.S.C.A. § 796(8).—FPL Energy Maine Hydro LLC v. F.E.R.C., 287 F.3d 1151, 351 U.S.App.D.C. 148.—Nav Wat 1(7).

App.D.C. 1936. "Navigability" does not depend on the particular mode in which such use is or may be had, whether by steamboats, sailing vessels, or flatboats, nor on absence of occasional difficulties in navigation, but on the fact, if it is a fact, that the stream in its natural and ordinary condition affords a channel for useful commerce.—Miami Beach Jockey Club v. Dern, 83 F.2d 715, 65 App.D.C. 369, opinion supplemented 86 F.2d 135, 66 App.D.C. 254, certiorari denied 57 S.Ct. 17, 299 U.S. 556, 81 L.Ed. 409.

C.A.6 1996. Threshold requirement of "navigability," for purposes of LHWCA "situation" test, is presence of "interstate nexus" in order for body of water to function as continuous highway for commerce between ports, and waterway must also be capable of floating logs, boats and rafts. Long-shore and Harbor Workers' Compensation Act, § 3(a), 33 U.S.C.A. § 903(a).—Rizzi v. Underwater Const. Corp., 84 F.3d 199, 1996 Fed.App. 145P, certiorari denied 117 S.Ct. 302, 519 U.S. 931, 136 L.Ed.2d 220.—Work Comp 260.

C.A.8 (Ark.) 1980. Closing of waters to commercial shipping has effect of eliminating admiralty jurisdiction over them; in other words, concept of "navigability" in admiralty is properly limited to describing a present capability of waters to sustain commercial shipping. Suits in Admiralty Act, § 2, 46 U.S.C.A. § 742; 28 U.S.C.A. § 1333(1).—Living-

ston v. U.S., 627 F.2d 165, certiorari denied 101 S.Ct. 1354, 450 U.S. 914, 67 L.Ed.2d 338.—Adm 4.

C.A.11 (Fla.) 1995. Explorer's account of his journey up creek did not necessarily support finding of "navigability," under Rivers and Harbors Act, where explorer reported that on his way up creek, when party reached what was probably marsh, they proceeded with great difficulty, pushing canoes through weeds and hauling canoes over two troublesome places and that on return trip, after two haulovers, party had to search for significant length of time to find creek. 33 U.S.C.A. § 403.—Lykes Bros., Inc. v. U.S. Army Corps of Engineers, 64 F.3d 630.—Nav Wat 1(7).

C.A.11 (Fla.) 1995. "Navigability" under Rivers and Harbors Act is not destroyed by occasional obstructions or portages. 33 U.S.C.A. § 403.—Lykes Bros., Inc. v. U.S. Army Corps of Engineers, 64 F.3d 630.—Nav Wat 1(3).

C.A.11 (Fla.) 1995. Although surveyors do not settle questions of "navigability," under Rivers and Harbors Act, surveyor's actions are probative of issue. 33 U.S.C.A. § 403.—Lykes Bros., Inc. v. U.S. Army Corps of Engineers, 64 F.3d 630.—Nav Wat 1(7).

C.A.11 (Fla.) 1995. District court properly considered fact that Coast Guard did not include creek in its publication, *Bridges Over Navigable Waters*, as indicating creek was not "navigable," under Rivers and Harbors Act; publication, which provided list of permitted and unpermitted bridges, was relevant, although not dispositive, on issue of "navigability" of creek because permit was required only for construction of bridge over navigable waters. 33 U.S.C.A. § 403.—Lykes Bros., Inc. v. U.S. Army Corps of Engineers, 64 F.3d 630.—Nav Wat 1(7).

C.A.11 (Fla.) 1995. Memorandum of United States Coast Guard stating that creek had no physical characteristics indicative of present or past use for substantial commercial navigation and no reasonable susceptibility for future substantial commercial use and has not been determined congressionally or by controlling case law to be navigable waterway of United States was relevant, although not dispositive, on issue of "navigability" of creek, under Rivers and Harbors Act. 33 U.S.C.A. § 403.—Lykes Bros., Inc. v. U.S. Army Corps of Engineers, 64 F.3d 630.—Nav Wat 1(7).

C.A.4 (Md.) 1993. "Navigability" is based on a waterway's capability to bear commercial navigation.—Mullenix v. U.S., 984 F.2d 101.—Nav Wat 1(3).

C.C.A.8 (Minn.) 1931. "Navigability" depends on whether river is natural highway for customary commerce; navigability in law not being destroyed by occasional or seasonal interruptions. "Navigability" depends on whether the river, in its natural state, is used or capable of being used as a highway for commerce, over which trade and travel is or may be conducted in the customary modes of trade and travel on water, and is not destroyed, in the sense of the law, merely because the water course is interrupted by occasional natural obstructions or

portages, or because navigation is not open at all seasons of the year, or at all stages of the water.—Clark v. Pigeon River Imp. Slide & Boom Co., 52 F.2d 550.—Nav Wat 1(3).

C.C.A.8 (Minn.) 1931. "Navigability" depends on whether river is natural highway for customary commerce; navigability in law not being destroyed by occasional or seasonal interruptions.—Clark v. Pigeon River Imp. Slide & Boom Co., 52 F.2d 550.—Nav Wat 1(3).

D.Alaska 1987. Susceptibility of waterbody to use as highway for commerce in the absence of actual use as highway for commerce suffices to establish "navigability," for purposes of rule providing that states have title to beds of navigable waterbodies. Submerged Lands Act, § 2 et seq., 43 U.S.C.A. § 1301 et seq.—State of Alaska v. U.S., 662 F.Supp. 455, affirmed State of Alaska v. Ahtna, Inc., 891 F.2d 1401, certiorari denied 110 S.Ct. 1949, 495 U.S. 919, 109 L.Ed.2d 312.—Nav Wat 1(3).

S.D.Ga. 1973. "Navigability" for federal regulatory purposes is governed by federal law and state law is not authoritative in such cases.—U.S. v. Lewis, 355 F.Supp. 1132.—Fed Cts 433.

N.D.N.Y. 1997. "Navigability" for purposes of admiralty tort jurisdiction is the requirement that a body of water be presently supporting or capable of supporting interstate trade or travel at time of the alleged wrongful acts.—LeBlanc v. Cleveland, 979 F.Supp. 142, affirmed 198 F.3d 353.—Adm 18.

E.D.Pa. 2002. The appropriate standard for determining the "navigability" of a body of water for the purpose of conferring federal admiralty jurisdiction in the Third Circuit is whether the body of water is actually navigable or susceptible to being navigated without modification from its current state. U.S.C.A. Const. Art. 3, § 2, cl. 1.—Fahnsesstock v. Reeder, 223 F.Supp.2d 618.—Fed Cts 194.

S.D.Tex. 1928. Where stream has not been used in commerce, commerce actually in esse or in posse is essential to "navigability." Where stream has never been impressed with character of navigability by past use in commerce, commerce actually in esse, or at least in all reasonable possibility in posse, is essential to "navigability"; power of Congress over such streams springs as an incident to general power to regulate commerce, and springs in aid of commerce, past, present, or actively potential.—Gulf & I. Ry. Co. of Texas v. Davis, 26 F.2d 930, affirmed 31 F.2d 109.—Commerce 18.

S.D.Tex. 1928. Where stream has not been used in commerce, commerce actually in esse or in posse is essential to "navigability."—Gulf & I. Ry. Co. of Texas v. Davis, 26 F.2d 930, affirmed 31 F.2d 109.—Commerce 82.35.

Del.Ch. 1995. "Navigability" generally means that waters are used, or susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in customary modes of trade and travel on water.—Hagan v. Delaware Anglers' & Gunners' Club, 655 A.2d 292.—Nav Wat 1(3).

Ill. 1923. Test of navigability stated; 'navigable.' The test of "navigability" is whether the water in its natural state is used or capable of being used as a highway for commerce over which trade and travel may be conducted in the customary modes of travel on water.—*Du Pont v. Miller*, 141 N.E. 423, 310 Ill. 140, error dismissed 46 S.Ct. 17, 269 U.S. 528, 70 L.Ed. 395.—Nav Wat 1(3).

Minn. 1947. Under federal law, capability of use rather than extent or manner thereof by the public for transportation and commerce affords true criteria of "navigability" of waters, and a water course may be "navigable" notwithstanding obstructions occasioned by natural barriers and notwithstanding artificial aids are required before commercial navigation may be undertaken.—*State v. Longyear Holding Co.*, 29 N.W.2d 657, 224 Minn. 451.—Nav Wat 1(3).

Miss. 1938. A nontidal stream or channel, in order to have the character of "navigability" so as to bring it within the admiralty jurisdiction and within the purview of the Federal Seamen's Act, must be, or have been in the past, capable of being used as a national public highway a considerable part of the year, and it is not sufficient that it have or had an adequate volume of water therefor only occasionally as a result of freshets or floods for brief periods of uncertain recurrence and duration. 46 U.S.C.A. §§ 688, 713.—*Frazie v. Orleans Dredging Co.*, 180 So. 816, 182 Miss. 193.—Adm 4.

Miss. 1938. In order that navigation by flood waters or high stages of water shall bring the stream or channel into the character of "navigability" within admiralty jurisdiction and within purview of the Federal Seamen's Act, stages of high water must occur with some frequency and at times of reasonable certainty and continue long enough to make the use of the stream or channel of dependable commercial value as a national public highway for that purpose. 46 U.S.C.A. §§ 688, 713.—*Frazie v. Orleans Dredging Co.*, 180 So. 816, 182 Miss. 193.—Adm 4.

N.Y.A.D. 2 Dept. 1933. Susceptibility of use, not extent of existing commerce, determines "navigability."—*Van Cortlandt v. New York Cent. R. Co.*, 263 N.Y.S. 842, 238 A.D. 132, reversed 192 N.E. 401, 265 N.Y. 249.—Nav Wat 1(3).

Tenn. 1938. The test of "navigability" is whether there is in the stream capacity for use for the purpose of transportation valuable to the public, and it is not necessary that the stream should have a capacity for flottage at all times of the year, nor that it should be available for use against the current as well as with it, but if in its natural state and with its ordinary volume of water, either constantly or at regularly recurring seasons, it has such capacity that it is valuable to the public, it is sufficient.—*American Red Cross v. Hinson*, 122 S.W.2d 433, 173 Tenn. 667.—Nav Wat 1(3).

Tex.Civ.App.—Waco 1935. "Navigability" does not depend on particular mode in which use of stream or lake is or may be had, whether by steamboats, sailing vessels, or flatboats, nor on absence of occasional difficulties in navigation but

on the fact, if it be a fact, that the stream or lake in its natural and ordinary condition affords a channel for useful commerce.—*Taylor Fishing Club v. Hammett*, 88 S.W.2d 127, writ dismissed.—Nav Wat 1(3).

Wash. 1955. Term "navigable" or "navigability" means such waters as are capable of being used practically for the carriage of commerce.—*Kemp v. Putnam*, 288 P.2d 837, 47 Wash.2d 530.—Nav Wat 1(1).

Wash. 1943. The terms "navigable" and "navigability", as used within constitutional provision under which state acquired title to all tidelands as well as beds and shores of navigable waters, is such as is capable of being used practically for the carriage of commerce. Const. art. 17, § 1.—*Strand v. State*, 132 P.2d 1011, 16 Wash.2d 107.—Nav Wat 36(1).

Wash. 1939. That the state of Washington, through its public officers, assumed and acted on belief that North Lake was a navigable body of water, did not determine whether such lake was navigable; "navigability" being a judicial question, the determination of which concludes the rights of the parties to the bed of the lake.—*Purdy v. State*, 92 P.2d 880, 199 Wash. 638.—Const Law 79; Nav Wat 1(3).

Wash. 1932. "Navigability" imports travel, commerce, and transportation upon water as highway, and fact that there is sufficient water to float a commercial boat is not sufficient.—*Snively v. State*, 9 P.2d 773, 167 Wash. 385.—Nav Wat 1(5).

Wyo. 1961. "Navigability" in federal sense means capability or susceptibility of waters, in their natural condition, of being used for navigation in interstate or international commerce, and "navigability" in any other sense may mean one of variety of definitions given by either of the several states of union.—*Day v. Armstrong*, 362 P.2d 137.—Nav Wat 1(3).

NAVIGABILITY IN FACT

N.D. 1921. In determining the status of an inland lake in North Dakota as public or private waters, the test of "navigability in fact" is not confined to a capacity for use in commerce of a pecuniary value, but may be extended to capacity for use for purposes of navigation for pleasure, public convenience and enjoyment.—*Roberts v. Taylor*, 181 N.W. 622, 47 N.D. 146.

NAVIGABLE

U.S.Va. 1940. Rivers which are navigable in fact must be regarded as public navigable rivers in law, and they are "navigable" in fact when they are used or are susceptible of being used in their ordinary condition as highways for "commerce" over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*U.S. v. Appalachian Elec. Power Co.*, 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition

denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Nav Wat 1(1).

U.S.Va. 1940. Navigability for purposes of federal control does not depend solely upon “natural and ordinary condition of river”, which refers to volume of water, the gradients and the regularity of the flow, but availability for navigation must also be considered in determining whether river is “navigable”, and the feasibility of interstate use after reasonable improvements, regardless of whether the improvements are actually completed or even authorized, may properly be considered. U.S.C.A. Const. art. 1, § 8, cl. 3.—U.S. v. Appalachian Elec. Power Co., 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Commerce 82.35.

U.S.Va. 1940. A waterway otherwise suitable for navigation is not barred from classification as a “navigable” water subject to federal control merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken. U.S.C.A. Const. art. 1, § 8, cl. 3.—U.S. v. Appalachian Elec. Power Co., 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Commerce 82.35.

U.S.Va. 1940. The use of river need not be continuous in order to make river “navigable” for purposes of federal control, and absence of use over long periods of years because of changed conditions does not affect navigability in the constitutional sense. U.S.C.A. Const. art. 1, § 8, cl. 3.—U.S. v. Appalachian Elec. Power Co., 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Commerce 82.35.

U.S.Va. 1940. Navigability of waterway may be of a substantial part only in order for waterway to be “navigable” for purpose of federal control. U.S.C.A. Const. art. 1, § 8, cl. 3.—U.S. v. Appalachian Elec. Power Co., 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Commerce 82.35.

U.S.Va. 1940. Lack of commercial traffic is not a bar to a conclusion that stream is “navigable”, where personal or private use by boats demonstrates the availability of the stream for the simpler types of commercial navigation.—U.S. v. Appalachian Elec. Power Co., 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Nav Wat 1(3).

C.A.D.C. 2002. Waterway upon which hydroelectric project is located may be regarded “navigable,” so as to trigger licensing requirements of the Federal Power Act (FPA), only if it forms a highway for commerce with other states, or with foreign countries, either by itself or by connecting with other waters. Federal Power Act, § 3(8), as amended, 16 U.S.C.A. § 796(8).—FPL Energy

Maine Hydro LLC v. F.E.R.C., 287 F.3d 1151, 351 U.S.App.D.C. 148.—Nav Wat 1(3).

C.A.D.C. 2002. Waterway upon which hydroelectric project is located may be regarded “navigable,” so as to trigger licensing requirements of the Federal Power Act (FPA): (1) if it presently is being used, or is suitable for use, as highway for commerce; (2) if it has been used or was suitable for such use in past; or (3) if it could be made suitable for such use in the future by reasonable improvements. Federal Power Act, § 3(8), as amended, 16 U.S.C.A. § 796(8).—FPL Energy Maine Hydro LLC v. F.E.R.C., 287 F.3d 1151, 351 U.S.App.D.C. 148.—Nav Wat 1(3).

C.A.D.C. 2002. Just because body of water on which hydroelectric project is located has not been put to commercial use does not mean that it is not susceptible to commercial use, so as to be “navigable,” for purpose of licensing requirements of the Federal Power Act (FPA). Federal Power Act, § 3(8), as amended, 16 U.S.C.A. § 796(8).—FPL Energy Maine Hydro LLC v. F.E.R.C., 287 F.3d 1151, 351 U.S.App.D.C. 148.—Nav Wat 1(3).

C.A.D.C. 2002. Use of stream in the transport of persons or property in interstate or foreign commerce need not include two-way transport, in order for the stream to be “navigable,” and for any non-federal hydroelectric project located thereon to be subject to licensing under the Federal Power Act (FPA). Federal Power Act, § 3(8), as amended, 16 U.S.C.A. § 796(8).—FPL Energy Maine Hydro LLC v. F.E.R.C., 287 F.3d 1151, 351 U.S.App.D.C. 148.—Nav Wat 1(3).

C.A.D.C. 1985. Concrete works of titanic proportions involving high engineering skill and expenditure of vast sums of money are not included with “reasonable improvements to navigability” for purpose of determining whether water course is “navigable.”—Washington Water Power Co. v. F.E.R.C., 775 F.2d 305, 249 U.S.App.D.C. 255.—Nav Wat 1(3).

C.A.2 1992. River on which hydroelectric projects were located was “navigable,” and thus that projects needed federal licensing; river had historically been used for boat traffic and for floating logs downstream, even in absence of evidence that logs were ever floated over falls. Federal Power Act, §§ 1 et seq., 3(8), as amended, 16 U.S.C.A. §§ 792 et seq., 796(8).—State ex rel. New York State Dept. of Environmental Conservation v. F.E.R.C., 954 F.2d 56.—Nav Wat 1(7).

C.A.9 (Cal.) 1989. Fact that vessel on which claimant under Jones Act was employed floated on waterway used for irrigation purposes and engaged in commercial activity did not render waterway “navigable” in view of admiralty, as required for claimant to recover under Act as a “seaman.” Jones Act, 46 U.S.C.A.App. § 688.—Stanfield v. Shellmaker, Inc., 869 F.2d 521.—Seamen 2.

C.A.9 (Cal.) 1950. A waterway otherwise suitable for navigation is not barred from classification as “navigable” water subject to federal control merely because artificial aids must make the high-

way suitable for use before commercial navigation may be undertaken. U.S.C.A.Const. art. 1, § 8, cl. 3.—*Davis v. U.S.*, 185 F.2d 938, certiorari denied 71 S.Ct. 495, 340 U.S. 932, 95 L.Ed. 673.—Commerce 82.35.

C.A.9 (Cal.) 1950. The use of waterway need not be continuous in order to make it “navigable” for purposes of federal control, and absence of use over long periods of years because of changed conditions does not affect navigability in the constitutional sense. U.S.C.A.Const. art. 1, § 8, cl. 3.—*Davis v. U.S.*, 185 F.2d 938, certiorari denied 71 S.Ct. 495, 340 U.S. 932, 95 L.Ed. 673.—Commerce 82.35.

C.A.9 (Cal.) 1950. Navigability of waterway may be of a substantial part only in order for waterway to be “navigable” for purpose of federal control. U.S.C.A.Const. art. 1, § 8, cl. 3.—*Davis v. U.S.*, 185 F.2d 938, certiorari denied 71 S.Ct. 495, 340 U.S. 932, 95 L.Ed. 673.—Commerce 82.35.

C.A.9 (Cal.) 1950. Lake Tahoe, which has no outlet to the sea, is a “navigable” body of water of the United States within scope of federal jurisdiction if it is used, or is susceptible of being used, in its ordinary condition, or with reasonable improvement, as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water, and if it forms, by itself or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water. U.S.C.A.Const. art. 1, § 8, cl. 3.—*Davis v. U.S.*, 185 F.2d 938, certiorari denied 71 S.Ct. 495, 340 U.S. 932, 95 L.Ed. 673.—Commerce 82.35; Nav Wat 1(1).

C.A.11 (Fla.) 1995. Once waterway is found to be “navigable,” under Rivers and Harbors Act, it remains so; therefore, if waterway at one time was navigable in its natural or improved state, or was susceptible to navigation by way of reasonable improvement, it retains its navigable status, even though it is not presently used for commerce, or is presently incapable of use because of changed conditions or presence of obstructions. 33 U.S.C.A. § 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Nav Wat 1(3).

C.A.11 (Fla.) 1995. Creek was not “navigable,” under Rivers and Harbors Act, as matter of law, before 1880s, whether or not internally navigable, where creek’s only link to interstate commerce lay through lake which had no navigable water passage to either Atlantic Ocean or Gulf of Mexico. 33 U.S.C.A. § 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Nav Wat 1(6).

C.A.11 (Fla.) 1995. Public land survey performed by surveyor that showed “meander” readings on only one side of creek was probative that creek was not “navigable,” under Rivers and Harbors Act, at time of survey; surveyors were required to meander both sides of what they concluded were navigable waters and to meander one bank of what surveyor thought were well defined natural arteries of “internal communication.” 33 U.S.C.A.

§ 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Nav Wat 1(7).

C.A.11 (Fla.) 1995. Surveyor’s measuring of width of creek by triangulation did not necessarily show that channel was well defined and deep so as to be “navigable,” under Rivers and Harbors Act, at time of survey, where record indicated that there were other reasons surveyor might have used triangulation, such as if channel were very wide and filled with obstacles. 33 U.S.C.A. § 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Nav Wat 1(7).

C.A.11 (Fla.) 1995. Aerial photographs of creek from early 1940s were probative as to whether creek was “navigable,” under Rivers and Harbors Act, at time of photographs, where photographs showed no sign of recently filled channel, indicating that no channel existed for some time before 1940. 33 U.S.C.A. § 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Evid 359(1); Nav Wat 1(7).

C.A.11 (Fla.) 1995. State of Florida’s failure to reserve public rights of access to creek in deeds surrounding creek was probative of whether state considered creek to be “navigable” at time property was conveyed, even though, under Florida law, failure to reserve public rights did not divest state of title. 33 U.S.C.A. § 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Nav Wat 1(7).

C.A.11 (Fla.) 1995. Actions by state of Florida in leasing creek from owner of property encompassing creek corridor and limiting access by public to creek by placing fences was probative of whether state considered creek to be “navigable” and under sovereign ownership. 33 U.S.C.A. § 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Nav Wat 1(7).

C.A.5 (Fla.) 1973. Historic test of whether body of water is “navigable” is whether the waterway in its natural and ordinary condition affords a channel for useful commerce.—*U.S. v. Joseph G. Moretti, Inc.*, 478 F.2d 418, on remand 387 F.Supp. 1404, reversed in part, vacated in part 526 F.2d 1306, on remand 423 F.Supp. 1197, vacated and remanded 592 F.2d 1189.—Nav Wat 1(3).

C.A.9 (Hawaii) 1978. In determining whether water is “navigable,” the factual inquiry is whether the water has capability of use by public for purpose of transportation and commerce.—*U.S. v. Kaiser Aetna*, 584 F.2d 378, certiorari granted 99 S.Ct. 1211, 440 U.S. 906, 59 L.Ed.2d 453, reversed 100 S.Ct. 383, 444 U.S. 164, 62 L.Ed.2d 332.—Nav Wat 1(3).

C.A.5 (La.) 1995. Waterbodies are “navigable” when, in their ordinary condition, they can serve as highways for commerce, over which trade and travel are or may be conducted in customary modes.—*Dardar v. Lafourche Realty Co., Inc.*, 55 F.3d 1082.—Nav Wat 1(3).

C.A.4 (Md.) 1968. Rivers which are “navigable” in fact must be regarded as public “navigable” rivers in law, and they are “navigable” in fact when

used or susceptible of use in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in customary modes of trade and travel on water.—*Marine Stevedoring Corp. v. Oosting*, 398 F.2d 900, certiorari granted *Nacirema Operating Co. v. Johnson*, 89 S.Ct. 444, 393 U.S. 976, 21 L.Ed.2d 437, reversed 90 S.Ct. 347, 396 U.S. 212, 24 L.Ed.2d 371, rehearing denied 90 S.Ct. 895, 397 U.S. 929, 25 L.Ed.2d 109, rehearing denied *Traynor v. Johnson*, 90 S.Ct. 896, 397 U.S. 929, 25 L.Ed.2d 109.—*Nav Wat* 1(1).

C.A.9 (Mont.) 1975. A water is “navigable,” for purposes of admiralty jurisdiction, provided that it is used or susceptible of being used as an artery of commerce. U.S.C.A.Const. art. 3, § 2, cl. 1.—*Adams v. Montana Power Co.*, 528 F.2d 437.—*Adm* 4.

C.A.2 (N.Y.) 2002. Canal that was tidal, in that its level fluctuated with ebb and flow of tide and easy passage was possible only when tide was high, was “navigable” for purposes of requirement, under Rivers and Harbors Appropriation Act, that permit be obtained from Army Corps of Engineers for installation of any structure in nation’s navigable waters that could interfere with navigation. 33 U.S.C.A. § 403; 33 C.F.R. §§ 325.8, 329.4.—*U.S. v. Angell*, 292 F.3d 333.—*Nav Wat* 1(6).

C.A.2 (N.Y.) 1999. A waterway at a particular situs is “navigable” for purposes of admiralty jurisdiction if it is presently used, or is presently capable of being used, as an interstate highway for commercial trade or travel in the customary modes of travel on water; natural and artificial obstructions that effectively prohibit such commerce defeat admiralty jurisdiction, notwithstanding any historical usage. U.S.C.A. Const. Art. 3, § 2, cl. 1; 28 U.S.C.A. § 1333(1).—*LeBlanc v. Cleveland*, 198 F.3d 353.—*Adm* 4.

C.A.6 (Ohio) 1982. A river is “navigable” if it can be made useful through reasonable improvements.—*Miami Valley Conservancy Dist. v. Alexander*, 692 F.2d 447, certiorari denied *Miami Conservancy Dist. v. Marsh*, 103 S.Ct. 3096, 462 U.S. 1123, 77 L.Ed.2d 1355.—*Nav Wat* 1(3).

C.A.9 (Or.) 1982. River is “navigable” under federal law when it is used or susceptible of use in ordinary condition as highway for commerce over which trade and travel are or may be conducted in customary modes of trade and travel on water.—*State of Or. By and Through Division of State Lands v. Riverfront Protection Ass’n*, 672 F.2d 792.—*Nav Wat* 1(3).

C.A.4 (Va.) 1991. Waters are “navigable,” for purpose of admiralty jurisdiction, when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in customary modes of trade and travel on water. 28 U.S.C.A. § 1333.—*Price v. Price*, 929 F.2d 131.—*Adm* 4; *Nav Wat* 1(3).

C.C.A.5 1946. Navigability for purposes of federal control does not depend solely upon “natural and ordinary condition of river”, which refers to

volume of water, the gradients and the regularity of the flow, but availability for navigation must also be considered in determining whether river is “navigable”. Federal Power Act § 3(8), 16 U.S.C.A. § 796(8).—*Georgia Power Co. v. Federal Power Commission*, 152 F.2d 908.—*Commerce* 82.35.

C.C.A.5 1946. A waterway otherwise suitable for navigation is not barred from classification as a “navigable” water subject to federal control merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken. Federal Power Act § 3(8), 16 U.S.C.A. § 796(8).—*Georgia Power Co. v. Federal Power Commission*, 152 F.2d 908.—*Commerce* 82.35.

C.C.A.5 1946. The use of a river need not be continuous in order to make river “navigable” for purposes of federal control, and absence of use over long periods of years because of changed condition, does not affect navigability in the constitutional sense. Federal Power Act § 3(8), 16 U.S.C.A. § 796(8); U.S.C.A.Const. art. 1, § 8, cl. 3.—*Georgia Power Co. v. Federal Power Commission*, 152 F.2d 908.—*Commerce* 82.35.

C.C.A.7 1945. Rivers which are navigable in fact must be regarded as public navigable rivers in law and they are “navigable” in fact when they are used, or are susceptible of being used, in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in customary modes of trade and travel on water.—*Wisconsin Public Service Corp. v. Federal Power Commission*, 147 F.2d 743, certiorari denied 65 S.Ct. 1574, 325 U.S. 880, 89 L.Ed. 1996, certiorari denied *State of Wis v. Federal Power Commission*, 65 S.Ct. 1575, 325 U.S. 880, 89 L.Ed. 1996.—*Nav Wat* 1(1).

C.C.A.7 1945. Rivers may be “navigable” despite obstruction of falls, rapids, sand bars, or shifting currents.—*Wisconsin Public Service Corp. v. Federal Power Commission*, 147 F.2d 743, certiorari denied 65 S.Ct. 1574, 325 U.S. 880, 89 L.Ed. 1996, certiorari denied *State of Wis v. Federal Power Commission*, 65 S.Ct. 1575, 325 U.S. 880, 89 L.Ed. 1996.—*Nav Wat* 1(1).

C.C.A.4 (Va.) 1939. A stretch of river not navigable in fact in its unimproved condition is not to be considered “navigable” merely because it might have been made navigable by improvements that were not in fact made.—*U.S. v. Appalachian Elec. Power Co.*, 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—*Nav Wat* 1(1).

D.Alaska 1983. Body of water is “navigable” under federal law when it is used or susceptible of use in its ordinary condition as a highway for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on the water.—*State of Alaska v. U.S.*, 563 F.Supp. 1223, affirmed 754 F.2d 851, certiorari

denied 106 S.Ct. 333, 474 U.S. 968, 88 L.Ed.2d 317.—Nav Wat 1(3).

W.D.Ark. 1967. In determining capacity as bearing on question of whether a stream should be considered as "navigable," inquiry should be made as to number of persons stream would accommodate and nature and extent of the kinds of vessels it would carry; the mere fact that stream might at times carry single logs or canoes or the average rowboat used by fishermen is not sufficient to establish navigability of the stream; the stream must be navigable for some purpose useful to trade or commerce; it must have a useful purpose in opening a commercial route for people living along its banks.—In re River Queen, 275 F.Supp. 403, affirmed *George v. Beavark, Inc.*, 402 F.2d 977.—Nav Wat 1(3).

D.Del. 1973. A waterway is "navigable" and subject to federal regulation if it is presently being used or is suitable for use, if it has been used or was suitable for use in the past or if it could be made suitable for use in the future by reasonable improvements for transportation and commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.—U.S. v. Pot-Nets, Inc., 363 F.Supp. 812.—Nav Wat 1(3).

D.D.C. 1975. Branch canals, which extend from Canal de Tierra in a northeasterly direction to site of plaintiff's apartment-hotel-condominium complex at Vacía Talega near San Juan, Puerto Rico, and which connect Vacía Talega wetlands with Laguna de Pinones, the Laguna la Torrecilla, and with the Atlantic Ocean, are "navigable" within permit requirements of Federal Water Pollution Control Act. Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), §§ 301(a), 309(a)(3, 4), 404, 404(a), 33 U.S.C.A. §§ 1311(a), 1319(a)(3, 4), 1344, 1344(a).—P. F. Z. Properties, Inc. v. Train, 393 F.Supp. 1370.—Environ Law 123, 173.

S.D.Fla. 1971. Federal test of whether body of water is "navigable" depends on whether it is capable, in its natural form or with reasonable modifications, to sustain commerce or transportation.—U.S. v. Joseph G. Moretti, Inc., 331 F.Supp. 151, vacated in part 478 F.2d 418, on remand 387 F.Supp. 1404, reversed in part, vacated in part 526 F.2d 1306, on remand 423 F.Supp. 1197, vacated and remanded 592 F.2d 1189.—Nav Wat 1(3).

N.D.Ind. 1984. As general rule, waters which are presently capable of commercial shipping are "navigable" for purposes of admiralty jurisdiction; even if the waters are not currently being used for commercial navigation, admiralty jurisdiction of federal court may be invoked where the same are susceptible of such use in their present state.—Reed v. U.S., 604 F.Supp. 1253.—Adm 4; Nav Wat 1(3).

W.D.Ky. 1992. Mere operation of pleasure craft, where interstate commerce is an impossibility, does not make a water "navigable" for purposes of conferring admiralty jurisdiction. Admiralty Jurisdiction Act, 46 App.U.S.C.A. § 740.—Lynch v. McFarland, 808 F.Supp. 559.—Adm 4.

M.D.La. 1997. Waterbodies are "navigable" for purposes of admiralty jurisdiction when, in their ordinary condition, they can serve as highways for commerce, over which trade and travel are or may be conducted in customary modes.—Weatherford v. U.S., 957 F.Supp. 830.—Adm 4.

W.D.La. 1987. Inland marsh with water depth ranging from zero to three feet was not "navigable" where only type of boat that could be used on marsh was air boat or small pirogue.—Strother v. Bren Lynn Corp., 671 F.Supp. 1118, affirmed 834 F.2d 1023.—Nav Wat 1(6).

W.D.La. 1965. Rivers are "navigable" in fact when they are used, or are susceptible of being used, in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—Madole v. Johnson, 241 F.Supp. 379.—Nav Wat 1(3).

D.Md. 1969. Under Maryland law, waters are considered "navigable" within rule recognizing title of state to soil beneath navigable waters, if such waters are subject to ebb and flow of tide.—U.S. v. 222.0 Acres of Land, More or Less, in Worcester County, State of Md., 306 F.Supp. 138, adhered to 324 F.Supp. 1170.—Nav Wat 1(4).

D.Mass. 1999. Waters are "navigable" for the purposes of federal admiralty tort jurisdiction when they are used, or are susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water; they constitute navigable waters of the United States when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water. 28 U.S.C.A. § 1333(1).—In re Bernstein, 81 F.Supp.2d 176.—Adm 17.1.

D.Mass. 1999. New Hampshire lake where boating accident took place was not "navigable," and therefore could not provide basis for federal admiralty jurisdiction; lake was land-locked, and because of numerous lockless dams and hydroelectric stations, it was impossible to travel by any type of watercraft from lake to any other state, to the open ocean, or to any foreign country. 28 U.S.C.A. § 1333(1).—In re Bernstein, 81 F.Supp.2d 176.—Adm 20.

D.Minn. 1978. A water body which was once navigable in its natural or improved state is "navigable" under Rivers and Harbors Act of 1899 even though it is not presently used, or is incapable of use, for commerce. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403.—Minnehaha Creek Watershed Dist. v. Hoffman, 449 F.Supp. 876, affirmed in part, reversed in part 597 F.2d 617.—Nav Wat 1(3).

E.D.Mo. 1988. The Lake of the Ozarks is not a "navigable" body of water within admiralty jurisdiction of federal courts; the Lake is impounded by

the Bagnell Dam, which has no locks to allow passage of boats from the Osage River into the Lake, and the Lake lies wholly within the State of Missouri; thus, the Lake is presently incapable of sustaining commercial shipping. 28 U.S.C.A. § 1333; 46 U.S.C.A.App. § 740.—Complaint of Three Buoys Houseboat Vacations U.S.A., Ltd., 689 F.Supp. 958, affirmed Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 878 F.2d 1096, rehearing denied, certiorari granted, vacated 110 S.Ct. 3265, 497 U.S. 1020, 111 L.Ed.2d 775, on remand 921 F.2d 775, certiorari denied 112 S.Ct. 272, 502 U.S. 898, 116 L.Ed.2d 224.—Nav Wat 1(6).

E.D.N.Y. 1952. Rivers are "navigable" in law which are navigable in fact, and they are navigable in fact when they are susceptible of being used in their ordinary condition as highways for commerce over which trade and travel may be conducted in the customary modes.—U.S. v. Cavalliotis, 105 F.Supp. 742.—Nav Wat 1(3).

S.D.N.Y. 1996. River is considered "navigable" if it is capable of being used by public for purposes of transportation and commerce.—Great American Ins. Co. v. Tugs 'Cissi Reinauer', 933 F.Supp. 1205.—Nav Wat 1(3).

S.D.N.Y. 1996. Section of river, where property damage was caused by ice pushed into marina by tugs, was "navigable" on dates when damage occurred, despite expert testimony that that section of river was closed to navigation during relevant time periods, and that that section was "usually" closed for certain period during winter; river itself was classified as navigable river, and bridge logs showed that numerous vessels navigated up river on other days during relevant time.—Great American Ins. Co. v. Tugs 'Cissi Reinauer', 933 F.Supp. 1205.—Nav Wat 1(6).

S.D.N.Y. 1973. Where Dickey Brook in New York was a tributary of navigable Hudson River but was not navigable in fact, the brook was not "navigable" within statute prohibiting the discharge of refuse into any navigable water of the United States or into any tributary of any navigable water from which refuse will flow or be washed into such navigable water, and fact that brook might be subject to tidal ebb and flow did not make it a navigable water of the United States. Rivers and Harbors Appropriation Act of 1899, § 13, 33 U.S.C.A. § 407.—U.S. v. American Cyanamid Co., 354 F.Supp. 1202, affirmed 480 F.2d 1132.—Environ Law 173; Nav Wat 1(4), 1(6).

D.N.D. 1991. River is "navigable" in law and in fact if, at time of statehood, river was used or susceptible of being used in its natural and ordinary condition as a highway for useful commerce in customary modes of trade and travel on water; vital point is whether natural navigation of river was such that it afforded channel for useful commerce.—State of N.D. ex rel. Bd. of University and School Lands v. U.S., 770 F.Supp. 506, affirmed 972 F.2d 235.—Nav Wat 1(3).

E.D.Pa. 2002. Intra-state segment of Susquehanna River between the Safe Harbor and Holtwood dams was not "navigable" for purpose of

federal admiralty jurisdiction, even though the Susquehanna River remained navigable for purposes of congressional authority under the Commerce Clause. U.S.C.A. Const. Arts. 1, § 8, cl. 3, 3, § 2, cl. 1.—Fahnestock v. Reeder, 223 F.Supp.2d 618.—Fed Cts 194.

E.D.Pa. 1972. Where lake on which Jones Act plaintiff was injured while working on a tug was man-made, landlocked and located on property owned by defendant completely within Commonwealth of Pennsylvania, and where lake was adjacent to but without access to river and no boats, ships or vessels could enter or leave the lake by way of water, the lake was not "navigable" within meaning of admiralty law and could not support admiralty jurisdiction over plaintiff's action. Jones Act, 46 U.S.C.A. § 688.—Oseredzuk v. Warner Co., 354 F.Supp. 453, affirmed 485 F.2d 680, certiorari denied 94 S.Ct. 1563, 415 U.S. 977, 39 L.Ed.2d 873.—Seamen 29(5.5).

E.D.Pa. 1972. Admiralty jurisdiction must be determined at time of loss, and landlocked lake, on which Jones Act plaintiff was injured while working on a tug, could not be considered "navigable" because it allegedly could be connected to an interstate commerce system by removing part of narrow strip of land separating it from another lake and by removing part of land between the other lake and a river. Jones Act, 46 U.S.C.A. § 688.—Oseredzuk v. Warner Co., 354 F.Supp. 453, affirmed 485 F.2d 680, certiorari denied 94 S.Ct. 1563, 415 U.S. 977, 39 L.Ed.2d 873.—Seamen 29(5.5).

S.D.Tex. 1995. Lake that was formed by damming river was not "navigable," thus precluding exercise of admiralty jurisdiction in personal injury action arising from pleasure-boat accident; lake was entirely landlocked, located entirely within Texas, and not capable of being used for interstate commerce of any kind in its present condition, as fact that river's navigability could be expanded in future had no relevance, as boats could not currently travel from lake to river.—Hardwick v. Pro-Line Boats, Inc., 895 F.Supp. 145.—Adm 4; Nav Wat 1(7).

Bkrtcy.W.D.Va. 1985. Test of admiralty jurisdiction under 28 U.S.C.A. § 1333, granting district courts original, exclusive jurisdiction in civil admiralty cases, is whether body of water is navigable, and waters are "navigable" when they are, in their ordinary condition, used or susceptible of use as highways for commerce, over which trade and travel may be conducted in their customary modes.—In re Dean, 55 B.R. 332.—Adm 4.

Ark. 1980. Segment of river which could be used for substantial portion of the year for recreational purposes was "navigable."—State v. McIlroy, 595 S.W.2d 659, 268 Ark. 227, certiorari denied 101 S.Ct. 124, 449 U.S. 843, 66 L.Ed.2d 51.—Nav Wat 1(6).

Ark. 1953. To be "navigable" a water course must have a useful capacity as a public highway of transportation, and it is not sufficient to conjecture that, at a remote time and in some unknown way, water course might be used as temporary means for

rafting logs or some like endeavor.—*Parker v. Moore*, 262 S.W.2d 891, 222 Ark. 811.—*Nav Wat* 1(3).

Cal.App. 3 Dist. 1971. River capable of use by pleasure boats was “navigable,” warranting issuance of injunction against obstructions as public nuisances, notwithstanding that river was not so designated by statute and notwithstanding that river bed was subject to taxation. *West’s Ann.Harbor and Navigation Code*, §§ 101–106; *West’s Ann.Civ. Code*, § 3479.—*People ex rel. Baker v. Mack*, 97 Cal.Rptr. 448, 19 Cal.App.3d 1040.—*Nav Wat* 1(5), 26(1).

Fla. 1956. To be “navigable” a body of water must be permanent in character, of sufficient size and so situated that it may be used for purposes common or useful to the public in the locality.—*Baker v. State ex rel. Jones*, 87 So.2d 497.—*Nav Wat* 1(3).

Idaho 1974. Any stream which, in its natural state, will float logs or any other commercial or floatable commodity or is capable of being navigated by oar or motor propelled small craft, for pleasure or commercial purposes, is “navigable” for purposes of establishing a right of public passage.—*Southern Idaho Fish and Game Ass’n v. Picabo Livestock, Inc.*, 528 P.2d 1295, 96 Idaho 360.—*Nav Wat* 1(5).

Ind. 1950. Under federal law, the rule is that a river is “navigable” in law which is navigable in fact.—*State ex rel. Ind. Dept. of Conservation v. Kivett*, 95 N.E.2d 145, 228 Ind. 623.—*Nav Wat* 1(3).

Kan. 1914. The main test of navigability in this country is ascertained by use or by public acts or declarations. The foundation for navigability in law is navigability in fact following the appropriation to public use and its publicity. The ebb and flow of the tide has nothing to do with making waters navigable. To say that waters are public is equivalent in a legal sense to saying they are “navigable.”—*State v. Akers*, 140 P. 637, 92 Kan. 169, *Am. Ann. Cas.* 1916B, 543, affirmed *Wear v. State of Kansas ex rel. Brewster*, 38 S.Ct. 55, 245 U.S. 154, *Am. Ann. Cas.* 1918B, 586, 62 L.Ed. 214.

La. 1927. Streams and lakes which are “navigable in fact,” that is, used or susceptible of being used in their natural and ordinary condition as highways for commerce, over which trade or travel may be conducted in customary modes, are deemed “navigable” in law.—*State v. Sweet Lake Land & Oil Co.*, 113 So. 833, 164 La. 240.—*Nav Wat* 1(1).

La.App. 3 Cir. 1985. A water course is “navigable” when by its depth, width and location it is rendered available for commerce.—*Shell Oil Co. v. Pitman*, 476 So.2d 1031.—*Nav Wat* 1(3).

Me. 1950. Bodies of water are “navigable” when they are used or are capable of being used in their ordinary condition as highways, and question of navigability is a question of fact.—*Flood v. Earle*, 71 A.2d 55, 145 Me. 24.—*Nav Wat* 1(1), 1(3).

Md. 1940. At common law, such waters as are “navigable,” in the popular sense of the word, regardless of whether the tide ebbs and flows in them, are “public highways.”—*Gray v. Gray*, 16 A.2d 166, 178 Md. 566.—*Nav Wat* 1(4).

Mich.App. 1976. The navigability of a lake, i. e., whether it is open to public use, is not necessarily determined by the navigability of its outlet creek and, therefore, the availability of access by water or from a highway to a lake which is otherwise private does not necessarily mean that the lake is open to public use and in that sense “navigable.”—*Michigan Conference Ass’n of Seventh-Day Adventists v. Commission of Natural Resources*, 245 N.W.2d 412, 70 Mich.App. 85.—*Nav Wat* 1(3).

Mich.App. 1970. Term “navigable” as used in statute enacted to protect riparian rights and public trust in navigable inland lakes and streams contemplates any valuable boat or vessel navigation. *M.C.L.A.* § 281.732(a).—*Pigorsh v. Fahner*, 177 N.W.2d 466, 22 Mich.App. 108, affirmed 194 N.W.2d 343, 386 Mich. 508.—*Nav Wat* 1(3).

Minn. 1952. A waterway which, when state was admitted to union, had capacity for floating logs only at high water, impounded from spring thaws and freshets, and then only with aid of dams and sluiceways, and then only with difficulty for three days in a normal year, was not “navigable” when state was admitted to union, and title to its bed did not vest in state by virtue of its admission to union.—*Bingenheimer v. Diamond Iron Min. Co.*, 54 N.W.2d 912, 237 Minn. 332.—*Nav Wat* 1(5), 36(1).

Minn. 1947. Under federal law, capability of use rather than extent or manner thereof by the public for transportation and commerce affords true criteria of “navigability” of waters, and a water course may be “navigable” notwithstanding obstructions occasioned by natural barriers and notwithstanding artificial aids are required before commercial navigation may be undertaken.—*State v. Longyear Holding Co.*, 29 N.W.2d 657, 224 Minn. 451.—*Nav Wat* 1(3).

Minn. 1914. Natural bodies of water are classed as navigable or nonnavigable. The term “navigable,” as used in this connection, has been extended beyond its technical signification. It is unnecessary that the water should be capable of commerce of pecuniary value. The division of waters into navigable and nonnavigable is but another way of dividing them into public and private waters. If a body of water is adapted for use for public purposes it is a public or navigable water.—*Snyder v. Great Northern Ry. Co.*, 148 N.W. 617, 127 Minn. 518.

Mo.App. E.D. 1991. River is “navigable,” with title to its bed in state, if, in its ordinary condition, it is or may be used as highway for commerce; it is capability of such use by public, rather than particular extent and manner of that use which is determinative.—*Skinner v. Osage County*, 822 S.W.2d 437.—*Nav Wat* 1(3), 36(1).

Mo.App. 1957. Where lake on land of defendants was result of excavations and erection of dam,

and major portion of dam remained, and tree stumps were present at point where lake joined Mississippi River after construction of dam across Mississippi River by United States, and small boat could be navigated from lake and into Mississippi River only through a tortuous course with extreme dexterity, the lake was not "navigable", and defendants could not be required to remove pontoon bridge from waters of lake in injunction suit by plaintiff, who was an adjoining landowner.—Sneed v. Weber, 307 S.W.2d 681.—Nav Wat 1(3), 26(1).

Mo.App. 1954. A stream or other body of water is "navigable" in law only when navigable in fact and is navigable in fact only where it is capable of being used for useful purposes of navigation, that is, for trade and travel in usual modes, so that, in usual sense, designation or classification of stream as navigable or not navigable must be considered to refer to surface streams.—State ex rel. Missouri Water Co. v. Bostian, 272 S.W.2d 857, reversed 280 S.W.2d 663, 365 Mo. 228.—Nav Wat 1(3).

N.Y.A.D. 2 Dept. 1974. Waters which are not navigable in fact are deemed "navigable" in law when they are shallow reaches of navigable bodies, and the power of the State extends over such waters.—State v. Bishop, 359 N.Y.S.2d 817, 46 A.D.2d 654.—Nav Wat 1(1), 2.

N.Y.A.D. 3 Dept. 1995. Pond located on private property was not "navigable," and public had no right to use of pond, where small boats and canoes which had historically used pond traveled nowhere and were used only for recreational purposes, there was no evidence of any historical use of pond for commercial purposes, and it was undisputed that owners of property held title to all land around pond, even though public could access pond from public highway which was located on easement across property.—Hanigan v. State, 629 N.Y.S.2d 509, 213 A.D.2d 80.—Nav Wat 1(6); Waters 96.

N.Y.A.D. 3 Dept. 1953. Navigability does not depend solely upon the natural and ordinary condition of the waterway, which refers to volume of water, the gradients and the regularity of flow, but availability for navigation must also be considered in determining whether river is "navigable", and a waterway otherwise suitable for navigation is not barred from that classification merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken.—People v. System Properties, 120 N.Y.S.2d 269, 281 A.D. 433, order Settled 128 N.Y.S.2d 583, modified 160 N.Y.S.2d 859, 2 N.Y.2d 330, 141 N.E.2d 429, motion granted People v. Trustees of Dartmouth College, 132 N.E.2d 321, 309 N.Y. 952, motion granted 152 N.Y.S.2d 283, 1 N.Y.2d 738, 135 N.E.2d 42, motion granted 153 N.Y.S.2d 44, 1 N.Y.2d 769, 135 N.E.2d 583.—Nav Wat 1(3).

N.Y.Sup. 1954. Use of small launches or rowboats does not render stream navigable, and mere depth of water, without profitable utility, will not render a water course navigable in legal sense, so as to subject it to public servitude, nor will fact that it is sufficient for pleasure boating or to enable hunters or fishermen to float their skiffs or canoes, and

to be "navigable" the water course must have a useful capacity as public highway of transportation.—Lewis v. Clark, 133 N.Y.S.2d 880, appeal dismissed 141 N.Y.S.2d 512, 285 A.D. 1006.—Nav Wat 1(5).

N.Y.Ct.Cl. 1972. Generally, if body of water may be put to a public transportation and commercial use, it is "navigable."—City of Albany v. State, 335 N.Y.S.2d 975, 71 Misc.2d 294.—Nav Wat 1(3).

N.Y.Ct.Cl. 1969. Creek, which had minimum depth of six feet, and which was traveled by pleasure boats and sport fishing boats mainly from river into creek and out again into river was "navigable". Navigation Law § 2, subds. 4, 5.—St. Lawrence Shores, Inc. v. State, 302 N.Y.S.2d 606, 60 Misc.2d 74.—Nav Wat 1(6).

N.Y.Police Ct. 1957. That harbor could be used for navigation not only by private boats but by smaller types of commercial craft, such as fishing and oyster boats, established that it was "navigable" irrespective of whether it had been used, to any significant extent, for commercial purposes.—People v. Kraemer, 164 N.Y.S.2d 423, 7 Misc.2d 373, dismissal denied 177 N.Y.S.2d 425, 14 Misc.2d 42, petition granted Application of Kraemer, 180 N.Y.S.2d 408, 7 A.D.2d 644, appeal granted Kraemer v. County Court of Suffolk County, 184 N.Y.S.2d 1025, 5 N.Y.2d 711, 157 N.E.2d 511, appeal granted 184 N.Y.S.2d 846, 5 N.Y.2d 982, 157 N.E.2d 721, affirmed 189 N.Y.S.2d 878, 6 N.Y.2d 363, 160 N.E.2d 633.—Nav Wat 1(1).

Ohio 1955. Where Beaver Creek, which ran into lake, was about 120 feet wide at its mouth, and for a distance of about two miles the width averaged 80 to 90 feet, and depth varied from 6 to 11 feet, and one of the plaintiffs had operated boat rental business on stream for 14 years until stopped by cables and fence constructed across stream by defendants, stream was "navigable," though it was crossed by two bridges, one of which had a clearance of but 5½ feet, and though stream became partially clogged with dense vegetation, brush and other debris, and therefore plaintiffs were entitled to mandatory injunctions to require defendants to remove the cables and wire fence. Ordinance of 1787, § 14, art. 4; 33 U.S.C.A. § 541.—Coleman v. Schaeffer, 126 N.E.2d 444, 163 Ohio St. 202, 56 O.O. 214.—Nav Wat 1(6), 26(1).

Okla. 1948. Under federal law, word "navigable" means navigable in fact.—Aladdin Petroleum Corp. v. State ex rel. Com'rs of Land Office, 191 P.2d 224, 200 Okla. 134, 1948 OK 39.—Nav Wat 1(1).

Okla.Crim.App. 1998. Neosho or Grand River was not "navigable" river, for purposes of determining United States' intent to convey riverbed to riparian owner; in its natural and ordinary condition, river lacked sufficient water and channel depth for at least 50% of its length to support useful commerce, though river had supported some commerce in its upper reaches nearly two hundred years ago.—Hanes v. State, 973 P.2d 330, 1998 OK CR 74, corrected, and rehearing denied.—Nav Wat 1(6).

Pa.Super. 2001. The rule for determining whether bodies of water are "navigable" is whether they are used, or susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*Mountain Properties, Inc. v. Tyler Hill Realty Corp.*, 767 A.2d 1096, appeal denied 782 A.2d 547, 566 Pa. 666.—Nav Wat 1(3).

R.I. 1940. A river is "navigable" in fact if it is susceptible of use, in its ordinary condition, as a highway for commerce over which trade and travel are or may be conducted in customary modes of trade and travel on water, and, to be navigable, it must be generally and commonly useful to purposes of trade and commerce.—*Asselin v. Blount*, 14 A.2d 696, 65 R.I. 293, reargument denied 16 A.2d 328, 65 R.I. 443.—Nav Wat 1(1).

S.C.App. 1997. Lake along navigable stream was "navigable," and thus defendant could not be convicted of fishing on lands of another without owner's permission, although predecessor-in-interest of owner of land surrounding lake had created it by damming the stream. Const. Art. 14, § 4; Code 1976, §§ 49-1-10, 50-1-90; S.C.Code Regs. 19-450.2.—*State v. Head*, 498 S.E.2d 389, 330 S.C. 79.—Fish 13(1).

Utah 1946. To be "navigable," a water course should be susceptible of use for purposes of commerce or possess capacity for valuable floatage in transportation to market of products of country through which it runs and should be of practical usefulness to public as public highway in its natural state, without aid of artificial means, and theoretical or potential navigability or temporary, precarious and unprofitable one is insufficient.—*Monroe v. State*, 175 P.2d 759, 111 Utah 1.—Nav Wat 1(3).

Va. 1955. The test of whether or not a stream is "floatable" or "navigable" is whether stream is used or is susceptible of being used in its natural or ordinary condition as a highway for commerce on which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*Boerner v. McCallister*, 89 S.E.2d 23, 197 Va. 169.—Nav Wat 1(3).

Wash. 1955. Term "navigable" or "navigability" means such waters as are capable of being used practically for the carriage of commerce.—*Kemp v. Putnam*, 288 P.2d 837, 47 Wash.2d 530.—Nav Wat 1(1).

Wash. 1943. The terms "navigable" and "navigability", as used within constitutional provision under which state acquired title to all tidelands as well as beds and shores of navigable waters, is such as is capable of being used practically for the carriage of commerce. Const. art. 17, § 1.—*Strand v. State*, 132 P.2d 1011, 16 Wash.2d 107.—Nav Wat 36(1).

Wash.App. Div. 2 1973. Fact that shingle bolts had on occasion been floated on river did not render it "navigable" in the general commercial sense.—*Knutson v. Reichel*, 518 P.2d 233, 10 Wash.

App. 293, 78 A.L.R.3d 598, review denied 83 Wash.2d 1009.—Nav Wat 1(5).

Wis. 1952. It is not necessary, in determining navigability of streams, to establish a past history of floating of logs or other use of commercial transportation, because any stream is "navigable" in fact which is capable of floating any boat, skiff or canoe of the shallowest draft used for recreational purposes.—*Muench v. Public Service Commission*, 53 N.W.2d 514, 261 Wis. 492, opinion adhered to on rehearing 55 N.W.2d 40, 261 Wis. 492.—Logs 12; Nav Wat 1(5).

NAVIGABLE AIR SPACE

Fla.App. 2 Dist. 1967. Superadjacent airspace between 250 feet and 500 feet above property lying near to runway of aviation authority's airport was not within "navigable airspace" which Congress has placed in the public domain and owners of the property did not have to establish a private property right in such airspace to recover from authority compensation for damages sustained by owners because of landings and take-offs of jet aircraft. Air Commerce Act of 1926, § 10, 49 U.S.C.A. § 180; Federal Aviation Act of 1958, § 101(24), 49 U.S.C.A. § 1301(24).—*Hillsborough County Aviation Authority v. Benitez*, 200 So.2d 194, certiorari denied 204 So.2d 328.—Aviation 3; Em Dom 104.

Ky.App. 1988. "Navigable air space" over which Airport Zoning Commission had jurisdiction is limited to areas within and around publicly owned airports, and does not extend to every square inch of usable common navigable air space within state. KRS 183.865, 183.866.—*Cosmos Broadcasting Corp. v. Com., Transp. Cabinet Aeronautical Div.*, 759 S.W.2d 824.—Aviation 223.

Neb. 1962. "Navigable airspace" means airspace above minimum altitudes of flight prescribed by applicable regulations, including airspace needed to insure safety in take-off and landing of aircraft. Federal Aviation Act of 1958, § 101 as amended 49 U.S.C.A. § 1301.—*Johnson v. Airport Authority of City of Omaha*, 115 N.W.2d 426, 173 Neb. 801.—Aviation 3.

NAVIGABLE BODY OF WATER

C.A.4 (Va.) 1991. John H. Kerr Reservoir (also known as Buggs Island Lake) which was one of series of man-made lakes constructed in river basin by Army Corps of Engineers and certain private utilities was "navigable body of water," even though reservoir was not currently used for commercial navigation; reservoir was capable of being used for purposes of transportation and commerce by ordinary modes of trade and travel on water. 28 U.S.C.A. § 1333.—*Price v. Price*, 929 F.2d 131.—Nav Wat 1(6).

La.App. 3 Cir. 1988. Catahoula Lake in Louisiana was "navigable body of water" for purposes of Jones Act and federal maritime jurisdiction with respect to claims asserted by drilling rig worker; although lake sustained much fluctuation in water level during course of year, it was created by drainage from two rivers, and tributaries flowing from

lake eventually provided unobstructed access to intercoastal waterways. Jones Act, 46 U.S.C.A. § 688.—*McFarland v. Justiss Oil Co., Inc.*, 526 So.2d 1206.—Adm 4; Nav Wat 1(6).

N.J.Ch. 1907. A “navigable body of water” is one which the public has a right to use for navigation. The term includes all waters having sufficient capacity to float water craft for a period long enough to be of commercial value, or to float to market the products of the country through which the water extends so as to be useful to the population along its banks. The stream must be of some value to trade, commerce, or agriculture, and the term therefore excludes waters which are merely capable of floating a skiff for pleasure. To be useful for commercial purposes, the water must connect with other waters or lead from one public place to another, so as to be in the path of commerce. A stream which leads from a public river to a private house, or to which the public had no access, except at one point where the highway approaches it, is not navigable so as to render it a public highway. A “navigable body of water” must have a terminus by which the public can enter it and another from which it can leave it, but it need not lead from one county to another. The rights of the public in a body of water are entirely dependent on its capacity for navigation.—*King v. Muller*, 67 A. 380, 73 N.J.Eq. 32.

Or. 1936. Small inland lake, which was not mile long and one-eighth mile wide, held not “navigable body of water” in sense that title to bed of lake would pass to state by virtue of its admission to Union.—*Luscher v. Reynolds*, 56 P.2d 1158, 153 Or. 625.—Nav Wat 1(1).

NAVIGABLE CAPACITY

C.A.3 (N.J.) 1974. Although 1890 statute prohibiting creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters, in respect to which the United States has jurisdiction, and superseding 1899 act, which contained the same “navigable capacity” language, were enacted pursuant to the commerce clause, neither reached the full extent of congressional power over commerce; in referring to “waters of the United States” Congress adopted the judicial definition of those waters as of 1890, that being the admiralty definition. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403; Act Sept. 19, 1890, § 10, 26 Stat. 454.—*U.S. v. Stoeco Homes, Inc.*, 498 F.2d 597, certiorari denied 95 S.Ct. 1124, 420 U.S. 927, 43 L.Ed.2d 397.—Nav Wat 19.

N.D.Cal. 1975. For purposes of Rivers and Harbors Act, “navigable capacity” means the capacity for navigation over any part of the waters in question when in their normal condition. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403.—*Sierra Club v. Morton*, 400 F.Supp. 610, affirmed in part, reversed in part 610 F.2d 581, certiorari granted *California v. Sierra Club*, 101 S.Ct. 68, 449 U.S. 818, 66 L.Ed.2d 19, reversed 101 S.Ct. 1775, 451 U.S. 287, 68 L.Ed.2d

101, vacated 101 S.Ct. 2039, 451 U.S. 965, 68 L.Ed.2d 344.—Nav Wat 19.

NAVIGABLE CHANNEL

C.A.1 (Mass.) 1979. Term “navigable channel” in statute prescribing duties of owners of wrecked vessels is not limited to the dredged, buoy-marked channels to which commercial vessels are confined. Rivers and Harbors Appropriation Act of 1899, § 15, 33 U.S.C.A. § 409.—*Chute v. U.S.*, 610 F.2d 7, certiorari denied 100 S.Ct. 2155, 446 U.S. 936, 64 L.Ed.2d 789.—Nav Wat 24.

C.C.A.2 (N.Y.) 1927. Owner of sunken barge had duty of making wreck within reasonable time after learning thereof; “navigable channel” (Comp. St. Secs. 9920, 9924). Under Act March 3, 1899, Sec. 15 (Comp. St. Sec. 9920), read together with section 19 (Comp. St. Sec. 9924), owner of barge, which was sunk just off main channel, had duty, as soon as he learned of wreck, of making it, since phrase “navigable channel: in section 15 (Comp. St. Sec. 9920) does not confine that duty to deeper channels marked by buoys and used by large vessels.—*Red Star Towing & Transportation Co. v. Woodburn*, 18 F.2d 77.—Nav Wat 24.

C.C.A.2 (N.Y.) 1927. Owner of sunken barge had duty of marking wreck within reasonable time after learning thereof; “navigable channel.” 33 U.S.C.A. §§ 409, 414.—*Red Star Towing & Transportation Co. v. Woodburn*, 18 F.2d 77.—Nav Wat 24.

E.D.La. 1967. Barge which was wrecked and sunk in Port Allen-Morgan City alternate route of Gulf Intercoastal Waterway was wrecked and sunk in a “navigable channel” within meaning of the Wreck Act. Rivers and Harbors Appropriation Act of 1899, §§ 9 et seq., 15, 16, 19, 20, 33 U.S.C.A. §§ 401 et seq., 409, 411, 412, 414, 415.—*Jones Towing, Inc. v. U.S.*, 277 F.Supp. 839.—Nav Wat 1(6).

D.Md. 1964. Phrase “navigable channel” within statute dealing with obstruction of navigable waters by vessels is not limited to deeper channels marked by buoys and used by large vessels. Rivers and Harbors Appropriation Act of 1899, § 15, 33 U.S.C.A. § 409.—*U.S. v. Bethlehem Steel Co.*, 235 F.Supp. 569, reversed *U. S. v. Moran Towing & Transp. Co.*, 374 F.2d 656, vacated 88 S.Ct. 689, 389 U.S. 575, 19 L.Ed.2d 775, on remand 409 F.2d 961, on remand 302 F.Supp. 600.—Nav Wat 23.

S.D.N.Y. 1975. Term “navigable channel” in statute imposing on owner duty to mark craft sunk in navigable channel is not confined to channels marked by buoys. Rivers and Harbors Appropriation Act of 1899, § 15, 33 U.S.C.A. § 409.—*Seeley v. Red Star Towing & Transp. Co.*, 396 F.Supp. 129.—Nav Wat 24.

S.D.N.Y. 1951. Under statute providing that it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such manner as to prevent or obstruct passage of other vessels or craft, slip between public piers is “navigable chan-

nel.” 33 U.S.C.A. § 409.—*Manhattan Lighterage Corp v. U S*, 103 F.Supp. 274.—*Collision* 69, 70.

E.D.Pa. 1961. Sunken carfloat which was located out of dredged channel but at point where water was sufficient for ship which collided with carfloat to navigate was in “navigable channel” within wreck statute imposing on owners duty to mark craft which are sunk in navigable channel. 33 U.S.C.A. § 409.—*Reading Co. v. Pope & Talbot, Inc.*, 192 F.Supp. 663, affirmed 295 F.2d 40.—*Nav Wat* 24.

Wash. 1908. A channel in a tide river which at half tide is navigable with a rowboat, and which at full tide is navigable for boats, is a “navigable channel,” though at low tide there is not much water therein.—*Judson v. Tide Water Lumber Co.*, 98 P. 377, 51 Wash. 164.—*Nav Wat* 1(4).

NAVIGABLE IN FACT

C.C.A.4 (Va.) 1939. Rivers which are navigable in fact must be regarded as “public navigable rivers” by law, and they are “navigable in fact” when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*U.S. v. Appalachian Elec. Power Co.*, 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—*Nav Wat* 1(1).

C.C.A.4 (Va.) 1939. An interstate stream is “navigable in fact” only when it is so used or susceptible of being used in its natural and ordinary condition, is capable of valuable public use in its natural condition, has capacity for useful interstate commerce of a substantial and permanent nature, and has a capacity for general and common usefulness for purposes of trade and commerce.—*U.S. v. Appalachian Elec. Power Co.*, 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—*Nav Wat* 1(1).

C.C.A.4 (Va.) 1939. Mere occasional or exceptional use of waters under abnormal conditions is not sufficient to make them “navigable in fact,” and navigability that is theoretical or potential, or temporary, precarious, and unprofitable, is not sufficient.—*U.S. v. Appalachian Elec. Power Co.*, 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—*Nav Wat* 1(1).

N.D.Ga. 1997. Body of water or river is “navigable in fact” for purposes of law, if it is used or susceptible of being used in its ordinary condition to transport commerce.—*Atlanta School of Kayaking, Inc. v. Douglasville- Douglas County Water*

and Sewer Authority, 981 F.Supp. 1469.—*Nav Wat* 1(3).

N.D.N.Y. 1997. Rivers are “navigable in fact” when they are used, or susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*LeBlanc v. Cleveland*, 979 F.Supp. 142, affirmed 198 F.3d 353.—*Nav Wat* 1(3).

Kan. 1927. Water is navigable in law, although not tidal, where navigable in fact, and is “navigable in fact,” where it is of sufficient capacity to be capable of being used for useful purposes of navigation, that is for trade and travel in the usual and ordinary modes.—*Webb v. Board of Com’rs of Neosho County*, 257 P. 966, 124 Kan. 38.

La. 1927. Streams and lakes which are “navigable in fact,” that is, used or susceptible of being used in their natural and ordinary condition as highways for commerce, over which trade or travel may be conducted in customary modes, are deemed “navigable” in law.—*State v. Sweet Lake Land & Oil Co.*, 113 So. 833, 164 La. 240.—*Nav Wat* 1(1).

La. 1927. Waters “navigable in fact” are “navigable” in law.—*State v. Sweet Lake Land & Oil Co.*, 113 So. 833, 164 La. 240.—*Nav Wat* 1(1).

Md. 1956. It is not necessary to a stream’s being “navigable in fact” that it be capable of carrying large vessels. Code 1951, art. 54, §§ 45, 48.—*Wagner v. City of Baltimore*, 124 A.2d 815, 210 Md. 615.—*Nav Wat* 1(5).

Minn. 1952. Streams or lakes which are navigable in fact are regarded as navigable in law and they are “navigable in fact” when they are used, or are susceptible of use, in their ordinary and natural condition, as highways for commerce.—*Bingenheimer v. Diamond Iron Min. Co.*, 54 N.W.2d 912, 237 Minn. 332.—*Nav Wat* 1(3).

N.Y.Sup. 1954. Streams are “navigable in fact” when they are used, or are susceptible of being used, in their natural and ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in customary modes of trade and travel on water, and navigability does not depend on particular mode in which such use is or may be had, whether by steamboats, sailing vessels or flatboats, nor on absence of occasional difficulties in navigation, but on fact, if it is a fact, that stream in its natural and ordinary condition affords a channel for useful commerce.—*Lewis v. Clark*, 133 N.Y.S.2d 880, appeal dismissed 141 N.Y.S.2d 512, 285 A.D. 1006.—*Nav Wat* 1(3).

Tex.Civ.App.—Waco 1935. Streams or lakes which are “navigable in fact” must be regarded as navigable in law, and they are “navigable in fact” when they are used or are susceptible of being used in their natural and ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*Taylor Fishing Club v. Hammett*, 88 S.W.2d 127, writ dismissed.—*Nav Wat* 1(3).

NAVIGABLE IN LAW

S.D.Ga. 1973. Marshlands are “navigable in law” only so far as the area is subject to inundation by the mean high waters. U.S.C.A.Const. art. 1, § 8, cl. 3.—U.S. v. Lewis, 355 F.Supp. 1132.—Nav Wat 1(4).

NAVIGABLE IN THE QUALIFIED SENSE

Mich.App. 1979. Streams which are incapable of year around navigation and which are used to float logs to mills during the spring are sometimes referred to as “navigable in the qualified sense.”—Nicholas v. McDaniel, 276 N.W.2d 538, 88 Mich.App. 120, reversed Bott v. Commission of Natural Resources of State of Mich. Dept. of Natural Resources, 327 N.W.2d 838, 415 Mich. 45.—Nav Wat 1(5).

NAVIGABLE LAKE

Cal. 1918. A “navigable lake” consists of a body of water contained within its banks as they exist at the stage of ordinary high water.—Churchill Co. v. Kingsbury, 174 P. 329, 178 Cal. 554.—Nav Wat 1(1).

Cal.App.3 Dist. 1935. Court will take judicial notice of fact that lake which is ten miles wide and fifteen miles in length with average depth which will readily float large vessels and is susceptible of use as public highway for transporting persons and property for commercial purposes is “navigable lake.”—City of Los Angeles v. Aitken, 52 P.2d 585, 10 Cal.App.2d 460.—Evid 10(5).

Cal.App.3 Dist. 1935. Mono Lake, which is ten miles wide and fifteen miles in length, with average depth which will readily float large vessels and is susceptible of use as public highway for transporting persons and property for commercial purposes, is “navigable lake.”—City of Los Angeles v. Aitken, 52 P.2d 585, 10 Cal.App.2d 460.—Nav Wat 1(6).

S.D. 1916. A lake covering several thousand acres in times of high water, but almost dry in times of drought, is a “navigable lake,” within Laws 1913, c. 18, authorizing the boards of county commissioners to construct artesian wells for the purpose of maintaining water in meandered lakes, to make them available for rowing, fishing, bathing, or other purposes; such waters being public waters, which should be preserved for the benefit and recreation of all persons.—Anderson v. Ray, 156 N.W. 591, 37 S.D. 17.

Tex.Civ.App.—Waco 1935. Stanmire Lake, an inland lake about 1½ miles long, 700 feet wide, with average depth of 15 feet at points 10 feet or more from its banks, and sporadically connected by water with a creek and a river, held not a “navigable lake.”—Taylor Fishing Club v. Hammett, 88 S.W.2d 127, writ dismissed.—Nav Wat 1(6).

NAVIGABLE OR FLOATABLE STREAM

Wash. 1913. A stream on which, between defendant power company’s intake and its tailrace, it was impossible to float shingle bolts without men and teams assisting in breaking up jams, opening up

new channels, and keeping logs from lodging on the banks and bars held not a “navigable or floatable stream.”—Sumner Lumber & Shingle Co. v. Pacific Coast Power Co., 131 P. 220, 72 Wash. 631.—Nav Wat 1(1).

NAVIGABLE PORTIONS OF NAVIGABLE STREAMS

Or. 1942. The “navigable portions of navigable streams”, within statute authorizing the State Land Board to lease the bed of navigable portions of navigable streams for purpose of removing gravel, rock, and sand therefrom, referred to the longitudinal rather than the lateral limits of navigability of such streams, in view of fact that, at point from which navigability ceases in any stream and such stream becomes nonnavigable, title to the bed of stream is in the owners of abutting lands, and that, within navigable length of a stream, the state is prima facie owner of the bed thereof, below ordinary high-water marks. ORS 274.530.—State v. McVey, 121 P.2d 461, 168 Or. 337, rehearing denied 123 P.2d 181, 168 Or. 337.—Nav Wat 37(6).

NAVIGABLE RIVER

U.S.Okla. 1922. A “navigable river” is one used or susceptible of being used in its ordinary condition as a highway for commerce over which trade and travel is, or may be, conducted in the customary modes of trade and travel on water, and the mode by which commerce is conducted thereon, or the difficulties attending navigation, is not conclusive.—Brewer-Elliott Oil & Gas Co. v. U.S., 43 S.Ct. 60, 260 U.S. 77, 67 L.Ed. 140.—Nav Wat 1(3).

App.D.C. 1941. Evidence, including showing that the Susquehanna river at different periods in the past has been used by vessels in interstate commerce of a kind, and that the river is susceptible in the future of being made navigable in interstate commerce if Congress should decide to appropriate the necessary money and authorize the work to be done, showed that the Susquehanna river at and near Holtwood, Pa., is a “navigable river” of the United States within the Federal Power Act requiring a license to operate and maintain a dam for developing electric power in any of the navigable waters of the United States. Federal Power Act. § 23, 16 U.S.C.A. § 817.—Pennsylvania Water & Power Co. v. Federal Power Commission, 123 F.2d 155, 74 App.D.C. 351, certiorari denied 62 S.Ct. 640, 315 U.S. 806, 86 L.Ed. 1205.—Nav Wat 2.

W.D.Ky. 1940. A river that is at times navigable in fact is considered a “navigable river,” which character is not lost by obstructions in its channel, low water, or discontinuance of commercial use.—Simmons v. U.S., 32 F.Supp. 302.—Nav Wat 1(1).

W.D.Mich. 1934. A “navigable river” is one which in its natural state is capable of floating logs, boats and rafts.—Ne-Bo-Shone Ass’n v. Hogarth, 7 F.Supp. 885, affirmed 81 F.2d 70.—Nav Wat 1(5).

D.Minn. 1956. Where a boating accident occurred on Lake Nipigon, Ontario, Canada, a lake connected to Lake Superior by a river which was not navigable in fact, and which never had been

used as a highway of commerce between the United States and Canada, and never would be susceptible of such commerce, such river and lake from which it flowed could not be considered as a "navigable river" and "navigable waters" respectively within constitutional concept of admiralty jurisdiction, and therefore federal district court lacked admiralty jurisdiction over petition for exoneration from liability, and of action for damages arising from such accident. 46 U.S.C.A. §§ 183-189; Admiralty Rule 51, 28 U.S.C.A.; U.S.C.A.Const. art. 1, § 8.—Petition of Keller, 149 F.Supp. 513.—Adm 4.

Ala. 1943. The Mobile river is a "navigable river," and its bed is owned by the state.—*Chamberlain v. Board of Com'rs of City of Mobile*, 11 So.2d 724, 243 Ala. 662.—Nav Wat 1(6), 36(1).

Kan. 1925. A "navigable river" is one which is used or is susceptible of being used in its ordinary condition, as a highway for commerce over which trade and travel are or may be conducted in customary modes of trade and travel on water. It does not depend on mode by which commerce is conducted on it, or upon difficulties attending navigation, but upon the fact whether river in its natural state is such that it affords a channel for useful commerce.—*Piazzek v. Drainage Dist. No. 1 of Jefferson County*, 237 P. 1059, 119 Kan. 119.

Ky. 1907. A "navigable river" is a natural highway for commerce. The Cumberland river is navigable in fact from its mouth to a point far above Nashville, and it is therefore a natural highway for commerce between two or more states, and, as such, is the property of the public constituting the country at large, and jurisdiction over it for purposes of interstate commerce is in Congress.—*Ryman Steamboat Line Co v. Commonwealth*, 101 S.W. 403, 125 Ky. 253, 30 Ky.L.Rptr. 1276, 10 L.R.A.N.S. 1187.

Me. 1910. The part of a river above falls and above the ebb and flow of the tide is not a "navigable river" at common law.—*Charles C. Wilson & Son v. Harrisburg*, 77 A. 787, 107 Me. 207.—Nav Wat 1(4).

N.Y. 1911. At common law a "navigable river" was confined to rivers or arms of the sea in which the tide ebbed and flowed, all fresh water rivers being nonnavigable; but all streams actually capable of navigation were common highways for commerce.—*Fulton Light, Heat & Power Co. v. State*, 94 N.E. 199, 200 N.Y. 400, reargument denied 95 N.E. 1129, 202 N.Y. 543.—Nav Wat 1(4).

Or. 1942. Where Port of Cascade Locks, on the Columbia river, included territory in drainage basin of Hood river, which in its natural state was not navigable, the artificial enlargement of the mouth of Hood river by the erection of the Bonneville Dam on the Columbia river did not convert the Hood river into a "navigable river" within the meaning of statute prohibiting a port in its petition for incorporation from extending its territory beyond the natural watershed of any drainage basin whose waters flow into another bay, estuary or river navigable from the sea situate within such county. ORS 777.010, 777.015.—*State ex rel. v. Port of*

Cascade Locks, 127 P.2d 351, 169 Or. 197.—Mun Corp 12(3).

NAVIGABLE RIVERS

Md. 1940. Rivers are "navigable rivers" in law when they are used or are susceptible of being used in their ordinary condition as highways of commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*Gray v. Gray*, 16 A.2d 166, 178 Md. 566.—Nav Wat 1(1).

N.Y. 1934. "Navigable rivers" are those that are navigable in fact when they are used, or are susceptible of being used, in their natural and ordinary condition as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water; and navigability does not depend on the particular mode in which such use is or may be made—whether by steamboats, sailing vessels or flatboats—nor on an absence of occasional difficulties in navigation, but on the fact, if it be a fact, that the stream in its natural and ordinary condition affords a channel for useful commerce.—*Van Cortlandt v. New York Cent. R. Co.*, 192 N.E. 401, 265 N.Y. 249.

Tenn. 1913. "Navigable rivers" are "rivers" which are in fact capable of being navigated.—*State v. West Tennessee Land Co.*, 158 S.W. 746, 127 Tenn. 575, Am. Ann. Cas. 1914B, 1043.—Nav Wat 1(3).

NAVIGABLE SEA

U.S.La. 1969. The "navigable sea" is divided into three zones: (1) nearest to the nation's shores are its internal or "inland waters"; (2) beyond the inland waters, and measured from their seaward edge, is a belt known as the marginal or "territorial sea"; and (3) outside the territorial sea are the "high seas."—*U.S. v. Louisiana*, 89 S.Ct. 773, 394 U.S. 11, 22 L.Ed.2d 44, rehearing denied 89 S.Ct. 1451, 394 U.S. 994, 22 L.Ed.2d 771, decision supplemented 89 S.Ct. 1614, 394 U.S. 836, 23 L.Ed.2d 22, and 119 S.Ct. 313, 525 U.S. 1, 142 L.Ed.2d 1.—Intern Law 5, 7.

NAVIGABLE STREAM

U.S. 1936. Privilege of states through which Colorado river, which is a "navigable stream" of United States, flows, and their inhabitants to appropriate and use water, is subject to paramount power of United States to control it for purpose of improving navigation (Boulder Canyon Project Act, 43 U.S.C.A. §§ 617-617t).—*State of Arizona v. State of California*, 56 S.Ct. 848, 298 U.S. 558, 80 L.Ed. 1331, rehearing denied 57 S.Ct. 4, 299 U.S. 618, 81 L.Ed. 456.—Nav Wat 2.

App.D.C. 1945. The Iowa statute providing that no dam should be constructed or maintained in any "navigable stream" for industrial purposes unless a permit therefor has been obtained is not limited in application to waters navigable according to state classification, although not navigable under federal classification. Code Iowa 1939, §§ 7767, 7771.—

First Iowa Hydro-Elec. Co-op. v. Federal Power Commission, 151 F.2d 20, 80 U.S.App.D.C. 211, certiorari granted First Iowa Hydro-Electric Co-Operative v. Federal Power Commission, 66 S.Ct. 337, 326 U.S. 715, 90 L.Ed. 423, reversed 66 S.Ct. 906, 328 U.S. 152, 90 L.Ed. 1143, rehearing denied 66 S.Ct. 1336, 328 U.S. 879, 90 L.Ed. 1647, on remand First Iowa Hydro-Electric Cooperative, 1946 WL 1342, petition denied 1946 WL 1086.—Nav Wat 22(1).

W.D.Ark. 1971. Evidence established that the Red River at a point near Fulton, Arkansas, where plaintiffs' decedents drowned while employed by defendant, was a "navigable stream." Act May 1, 1888, 25 Stat. 105; Act Jan. 20, 1897, 29 Stat. 492.—Spiller v. Thomas M. Lowe, Jr. & Associates, Inc., 328 F.Supp. 54, affirmed 466 F.2d 903, 20 A.L.R. Fed. 89.—Nav Wat 1(7).

E.D.Ky. 1973. Levisa Fork at its confluence with waters of Big Creek in Pike County, Kentucky is a "navigable stream," and it is afforded protection as a flood control project influencing Mississippi river and its major tributaries and directly affects interstate commerce because of that relationship. Navigation Regulations, § 2.10-5, 33 U.S.C.A. following section 1; 33 U.S.C.A. § 702j.—U.S. v. Kentland-Elkhorn Coal Corp., 353 F.Supp. 451.—Commerce 82.35; Nav Wat 1(6).

E.D.Mo. 1947. A stream, in order to have character of a "navigable stream" must be generally and commonly useful to some purpose of trade or agriculture and it is not enough to give stream such character merely because a fishing skiff or gunning canoe can be made to float thereon at high water.—U.S. v. Ross, 74 F.Supp. 6.—Nav Wat 1(3).

Cal.App. 3 Dist. 1928. "Navigable stream" does not include San Francisco Bay. St.1881, p. 76, as amended by St.1927, p. 1542, especially §§ 5, 7, 8 of Act 1881, and § 4 of amendatory act.—Tomasini v. Hyatt, 267 P. 1089, 92 Cal.App. 225.—Nav Wat 1(6).

Cal.App. 3 Dist. 1928. "Navigable stream" does not include San Francisco Bay so as to require state engineer to designate width of draw in proposed bridge. St.1881, p. 76, as amended by St.1927, p. 1542, especially §§ 5, 7, 8 of Act 1881, and § 4 of amendatory act.—Tomasini v. Hyatt, 267 P. 1089, 92 Cal.App. 225.—Nav Wat 20(7).

Ga. 1997. Evidence in suit by canoeing association to enjoin landowner from stopping free passage through his property on Armuchee Creek supported finding that creek, where it passed through the property, was not susceptible of carrying useful commerce between states in its natural and ordinary condition, and thus was not a "navigable stream" under federal law; evidence that also supported conclusion that portion of Armuchee Creek at issue was not a navigable stream under Georgia statute or the common law, precluding any public right of passage. O.C.G.A. § 44-8-5(a).—Georgia Canoeing Ass'n v. Henry, 482 S.E.2d 298, 267 Ga. 814, reconsideration denied.—Nav Wat 1(7).

Ga.App. 1908. A "navigable stream" is one capable of hearing on its bosom, either for the whole or a part of the year, boats loaded with freight in regular course of trade. The mere rafting of timber or transporting wood in small boats at certain seasons of the year is not sufficient to render the stream navigable.—Seaboard Air Line Ry. v. Sikes, 60 S.E. 868, 4 Ga.App. 7.

Idaho 1910. Every stream, which in its natural state is capable of floating logs or other commercial and floatable commodities for any practical period of time, is to such extent and for such time a "navigable stream," and the bed thereof is for such purposes subject to the regulation of the state.—Mashburn v. St. Joe Improvement Co., 113 P. 92, 19 Idaho 30, 35 L.R.A.N.S. 824.

Ill. 1925. Sangamon river not "navigable stream," but subject to jurisdiction of Commerce Commission in eminent domain proceedings; 'public waters.' Sangamon river is stream over which commerce cannot be carried in customary modes, and is not "navigable stream," and not among 'public waters' of state, and cannot be made navigable by mere legislation, and therefore is not under exclusive jurisdiction of department of public works and buildings, but in eminent domain proceedings to acquire right to overflow property is under jurisdiction of Commerce Commission.—Central Illinois Public Service Co. v. Vollentine, 149 N.E. 580, 319 Ill. 66.—Nav Wat 1(6).

Ill. 1925. Sangamon river not "navigable stream," but subject to jurisdiction of Commerce Commission in eminent domain proceedings; "public waters."—Central Illinois Public Service Co. v. Vollentine, 149 N.E. 580, 319 Ill. 66.—Nav Wat 1(6).

La. 1906. A "navigable stream" is one which is large enough to float a boat of some size, engaged in carrying trade, and implies the possibility of transporting men and things.—Burns v. Crescent Gun & Rod Club, 41 So. 249, 116 La. 1038.

Mich. 1943. A portion of the Little South Branch of the Pere Marquette River which could not be used for boating but had been used for floating logs, and in which the public had been fishing for more than fifty years, the state having expended large sums of money stocking it with fish, was a "navigable stream" or "public stream", and riparian owners could not exclude the public from fishing therein by the erection of barriers or making of deep excavations. Comp.Laws 1929, § 6425.—Rushon ex rel. Hoffmaster v. Taggart, 11 N.W.2d 193, 306 Mich. 432.—Fish 3; Nav Wat 1(6).

Mich. 1888. The term "navigable stream" does not include a stream which is only navigable for the running of logs at any season of the year by reason of dams built therein and improvements made, when without such improvements the running of logs therein would be impracticable at all times, and only possible for a few days in the spring at the highest stage of fresher water.—East Branch Sturgeon R. Imp. Co. v. White & Friant Lumber Co., 37 N.W. 192, 69 Mich. 207.

Mo.App. 1929. Instruction defining "navigable stream" held not erroneous in action for nuisance.—*Bollinger v. American Asphalt Roof Corp.*, 19 S.W.2d 544, 224 Mo.App. 98.—Nav Wat 35.

Mo.App. 1925. "Navigable stream" defined.—*Grobe v. Energy Coal & Supply Co.*, 275 S.W. 67, 217 Mo.App. 342.—Nav Wat 1(3).

N.Y.Ct.Cl. 1922. Ellicott creek, at Tonawanda, N.Y., although a nontidal inland stream, is one of those streams which are used or susceptible of being used, in their ordinary conditions, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade or travel on water, and is therefore a "navigable stream."—*Stegmeier v. State*, 191 N.Y.S. 894, 117 Misc. 626, affirmed 197 N.Y.S. 951, 204 A.D. 858.—Nav Wat 1(6).

N.C. 1945. Where Sound at its head on eastern side was a wide shallow salt marsh which at high tide was covered with water varying in depth from 18 inches to zero and on western side was a channel which at high tide at deepest point did not exceed 3 feet in depth, and at low tide water was confined to channel some 10 feet wide and 8 or 10 inches deep, Sound was not a "navigable stream."—*Kelly v. King*, 36 S.E.2d 220, 225 N.C. 709.—Nav Wat 1(6).

Or. 1908. A stream which had been successfully used for more than 20 years during the winter for floating logs to the market from a distance at least 10 miles above plaintiffs' mill was a "navigable stream" at the mill, notwithstanding opinions of witnesses that the stream was not navigable.—*Trullinger v. Howe*, 97 P. 548, 53 Or. 219, 22 L.R.A.N.S. 545, modified on rehearing 99 P. 880, 53 Or. 219, 22 L.R.A.N.S. 545.

S.C. 1904. A "navigable stream" is a highway open to the use of all.—*State v. Charleston Light & Water Co.*, 47 S.E. 979, 68 S.C. 540.

Tenn. 1938. To constitute a "navigable stream," the stream need not be perennially navigable, but, if navigable at certain seasons, the general rule is that the seasons of navigability must occur regularly and be of sufficient duration to serve a useful public purpose for commercial intercourse.—*American Red Cross v. Hinson*, 122 S.W.2d 433, 173 Tenn. 667.—Nav Wat 1(3).

Tex. 1937. As respects extent of rights of lands lying on navigable streams, shallow stream of average width of 30 feet or more measured from foot of banks at top of water in its ordinary state, with well-defined cuts and banks, average width of bed area between high banks being from 150 to 275 feet, which during prolonged drought ceased to flow and stood in holes, held a "perennial river" and "navigable stream" as defined by statute, though not in fact navigable. Vernon's Ann.Civ.St. art. 5302.—*Heard v. Town of Refugio*, 103 S.W.2d 728, 129 Tex. 349.—Nav Wat 1(2).

Tex.Civ.App.—Fort Worth 1937. A "navigable stream" is one which is capable of being used by the public at all times or periodically during the year for times long enough to make it susceptible of beneficial use to public as means of transportation

or which is capable in its natural state of serving as a highway or thoroughfare over which useful commerce is or may be conducted in any of the customary ways.—*St. Paul Fire & Marine Ins. Co. v. Carroll*, 106 S.W.2d 757, writ dismissed.—Nav Wat 1(3).

Tex.Civ.App.—Austin 1972. The Colorado river is recognized as a "navigable stream" within statute providing that survey lines for privately owned lands may not cross any stream which shall be considered navigable. Vernon's Ann.Civ.St. art. 5302.—*National Resort Communities, Inc. v. Cain*, 479 S.W.2d 341, ref. n.r.e., appeal after remand 512 S.W.2d 367, writ granted, reversed 526 S.W.2d 510.—Nav Wat 1(6).

Tex.Civ.App.—San Antonio 1981. A "navigable stream" for purposes of the Water Rights Adjudication Act is one that maintains an average width of 30 feet from the mouth up. V.T.C.A., Water Code §§ 3.301 et seq., 11.001(b), 11.320.—In re Adjudication of Upper Guadalupe River Segment of Guadalupe River Basin, 625 S.W.2d 353, writ granted, affirmed In re Adjudication of the Water Rights of Upper Guadalupe Segment of Guadalupe River Basin, 642 S.W.2d 438.—Nav Wat 1(3).

Tex.Civ.App.—San Antonio 1936. River with average width in excess of 30 feet from its mouth up held "navigable stream," notwithstanding river was not at all times navigable in fact, as respects extent of rights of owners of lands lying on navigable streams. Vernon's Ann.Civ.St. art. 5302.—*Town of Refugio v. Heard*, 95 S.W.2d 1008, reversed in part 103 S.W.2d 728, 129 Tex. 349.—Nav Wat 1(2).

Tex.Civ.App.—Beaumont 1976. Evidence, in sports club's suit against fishermen seeking to enjoin use of water on its property, was sufficient to support findings that at time original patent was taken on club's land, water lying thereon was not "navigable stream," but that such water presently had average width of 30 feet or more along its entire length and was thus "navigable stream" within meaning of statute. Vernon's Ann.Civ.St. art. 5302.—*Port Acres Sportsman's Club v. Mann*, 541 S.W.2d 847, ref. n.r.e.—Nav Wat 1(7).

Tex.Civ.App.—Galveston 1912. The court's instruction, in an action for the obstruction of a stream so as to interfere with the rafting of logs, that a navigable stream is one capable of being used at all times or periodically during the year for times long enough to make it susceptible of beneficial use to the public as a means of transportation, sufficiently defined a "navigable stream" for the purpose of the case, and defendant's requested instruction upon the same matter was properly refused.—*Burr's Ferry, B. & C. Ry. Co. v. Allen*, 149 S.W. 358.

Tex.Civ.App. 1910. Where streams were large enough to be used for floating logs and for commerce the greater part of the year, one being about a mile long, 300 feet wide, and from 6 to 8 feet deep, and the other 2 or 3 miles long, 50 feet wide at its mouth, and 10 or 12 feet deep in high water, they were navigable streams. Under Sayles' Ann. Civ.St.1897, art. 4147, Vernon's Ann.Civ.St. art.

5302, defining "navigable stream," the public would have a right to the use of such streams as navigable public highways whenever they have sufficient water for such purpose.—*Orange Lumber Co. v. Thompson*, 126 S.W. 604, 59 Tex.Civ.App. 562.

Va. 1941. The question of whether a stream is a "navigable stream" is one of fact, the test being whether the stream is being used or is susceptible of being used in its natural and ordinary condition, as a highway for commerce, on which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*Ewell v. Lambert*, 13 S.E.2d 333, 177 Va. 222.—*Nav Wat* 1(3).

Va. 1941. That a creek had been used for trade and commerce on occasions when conditions were favorable was not sufficient to show that creek was a "navigable stream".—*Ewell v. Lambert*, 13 S.E.2d 333, 177 Va. 222.—*Nav Wat* 1(7).

Va. 1941. Evidence sustained decree perpetually enjoining the Commission of Fisheries from asserting or exercising jurisdiction over the bed of Little Creek and from assigning or attempting to assign to an individual a described portion of creek bed as oyster grounds, on ground that Little Creek was not a "navigable stream" and therefore adjacent landowners were the owners of bed of creek from the low-water mark of their property to center of creek.—*Ewell v. Lambert*, 13 S.E.2d 333, 177 Va. 222.—*Nav Wat* 1(7).

Wash. 1941. A stream down which logs were floated during periods of high water was not a "navigable stream" within the constitutional provision declaring ownership of beds and navigable waters to be in state. Const. art. 17, § 1.—*Diking Dist. No. 2 of Pend Oreille County v. Calispel Duck Club*, 118 P.2d 780, 11 Wash.2d 131.—*Nav Wat* 1(6), 36(1).

Wash. 1904. A stream which in its natural state can be practically used for the floating of shingle bolts to market is a "navigable stream".—*Monroe Mill Co. v. Menzel*, 77 P. 813, 35 Wash. 487, 102 Am.St.Rep. 905, 70 L.R.A. 272.

Wash. 1904. A slough emptying into the sea, which during the ebb and flow of the tide is navigable for scows and for rafting and booming logs, is a "navigable stream".—*Dawson v. McMillan*, 75 P. 807, 34 Wash. 269.

Wis. 1906. The words "navigable stream" ordinarily mean a stream navigable in part, one of sufficient capacity to permit of saw logs being floated down the same at high water, and of small rowboats being used thereon to some extent, and such meaning must be attributed to such words when used in a statute, in the absence of ambiguity suggesting that a different meaning might have been intended, which is discoverable by judicial construction.—*Village of Bloomer v. Town of Bloomer*, 107 N.W. 974, 128 Wis. 297.—*Nav Wat* 1(5).

Wis. 1898. The term "navigable stream" is not limited to a tidewater stream, but the question in each case is whether it is in fact navigable; that is,

used or susceptible of being used, in its ordinary condition, as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. Willow river, an indirect tributary of the Mississippi, capable of floating logs at certain seasons of the year and carrying rowboats, although not meandered, and so shallow that in places the boats have to be pushed, is a public "navigable stream".—*Willow River Club v. Wade*, 76 N.W. 273, 100 Wis. 86, 42 L.R.A. 305.

NAVIGABLE STREAMS

Ala. 1902. "Navigable streams" are streams of sufficient width and depth for valuable floatage.—*Tuscaloosa County v. Foster*, 31 So. 587, 132 Ala. 392.

Cal. 1931. "Navigable streams," as used in statute authorizing municipalities to build bridges, included all bodies of water (St. 1883, p. 295; Pol. Code, § 2875). St. 1883, p. 295, provides that it shall be lawful for municipal corporations to erect and maintain draw-bridges across "navigable streams" that flow through or penetrate the boundaries of such city, when the necessities require it. This statute refers to Pol. Code, § 2875, which contains the headnote, 'How constructed over navigable waters,' and which statute requires that bridges over navigable streams must have draws or swings of sufficient space to permit passage of various craft which may navigate 'the stream or water bridged.'—*Southlands Co. v. City of San Diego*, 297 P. 521, 211 Cal. 646.—*Nav Wat* 20(2).

Cal. 1931. "Navigable streams," as used in statute authorizing municipalities to build bridges, included all bodies of water. St. 1883, p. 295 (repealed. See Govt. Code, § 40460); Pol. Code, § 2875 (repealed 1947).—*Southlands Co. v. City of San Diego*, 297 P. 521, 211 Cal. 646.—*Nav Wat* 20(2).

Cal. 1889. A series of California statutes declaring certain streams to be navigable, and prohibiting the construction of bridges across "navigable streams" without draws, or so as to obstruct the navigation, etc., will not be construed to include any stream other than such as have been declared navigable by the Legislature, or such as are generally navigable in fact; that is, during ordinary stages of water. The words "navigable streams," as so used, did not include streams that can be navigated only in times of high water.—*Cardwell v. Sacramento County*, 21 P. 763, 79 Cal. 347.

Me. 1907. The extended application of the right of the public to use "navigable streams," whether tidal or nontidal, even those of inconsiderable size, as highways for transporting merchandise, rafting and driving logs, and propelling boats, has made the terms "navigable" and "floatable" practically synonymous.—*Smart v. Aroostook Lumber Co.*, 68 A. 527, 103 Me. 37, 14 L.R.A.N.S. 1083.

NAVIGABLE WATER

U.S. 1942. The water in the harbor of Houston is "navigable water" and a boat at dock there is

within the "territorial limits of the United States" so as to render statute providing that a rebellion by seamen against their officers on board a vessel anywhere within the admiralty and maritime jurisdiction of the United States is to be punished as "mutiny" applicable to strike conducted on boat docked at Houston, which was not home port of the boat. Cr.Code §§ 292, 293, 18 U.S.C.A. §§ 483, 484.—Southern S.S. Co. v. N.L.R.B., 62 S.Ct. 886, 316 U.S. 31, 86 L.Ed. 1246.—Nav Wat 1(6); Seamen 34.

C.A.D.C. 1950. The 263 mile stretch of the Missouri River from Fort Benton, Montana, up stream to Three Forks is "navigable water" of the United States, and hence subject to the licensing requirements of the Federal Power Act, though such stretch had not actually been used for navigation for many years because of railway competition, and though dam below Fort Benton and falls prevented any continuous navigation down stream past Fort Benton. Federal Power Act, §§ 1 et seq., 3(8), 4(g), 23(b), 16 U.S.C.A. §§ 791a et seq., 796(8), 797(g), 817.—Montana Power Co. v. Federal Power Commission, 185 F.2d 491, 87 U.S.App.D.C. 316, certiorari denied 71 S.Ct. 532, 340 U.S. 947, 95 L.Ed. 683, rehearing denied 71 S.Ct. 620, 341 U.S. 912, 95 L.Ed. 1349.—Nav Wat 2.

C.A.11 (Fla.) 1986. Uncontradicted testimony that portion of wetlands area on which owner constructed fish ponds trapped undesirable pollutants and sediments before they reached open areas of river established that area in question was "adjacent wetland," so as to be "navigable water" subject to requirement that permit be obtained before placing dredge and fill material on such area under the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), § 404, as amended, 33 U.S.C.A. § 1344.—Conant v. U.S., 786 F.2d 1008.—Environ Law 150.

C.A.5 (Fla.) 1973. Florida Bay, at Hammer Point, Key Largo, Florida is a "navigable water" of the United States, and thus is subject to permit requirements of the Rivers and Harbors Appropriation Act of 1899 with respect to any excavation and fills therein. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403.—U.S. v. Joseph G. Moretti, Inc., 478 F.2d 418, on remand 387 F.Supp. 1404, reversed in part, vacated in part 526 F.2d 1306, on remand 423 F.Supp. 1197, vacated and remanded 592 F.2d 1189.—Nav Wat 1(6).

C.A.11 (Ga.) 1999. Stream into which property owner discharged stormwater runoff during timber harvesting and development was "navigable water" covered by Clean Water Act (CWA), even if it flowed only intermittently. Federal Water Pollution Control Act Amendments of 1972, § 502(7), 33 U.S.C.A. § 1362(7).—Driscoll v. Adams, 181 F.3d 1285, rehearing and rehearing denied 196 F.3d 1263, certiorari denied 120 S.Ct. 1961, 529 U.S. 1108, 146 L.Ed.2d 793.—Environ Law 173.

C.A.9 (Hawai'i) 1978. Where marina was rendered navigable by improvements made by lessee, such marina was "navigable water" of the United States and within regulatory control of United

States under the Rivers and Harbors Act, notwithstanding fact that marina was privately owned and had never been used in interstate commerce. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403.—U.S. v. Kaiser Aetna, 584 F.2d 378, certiorari granted 99 S.Ct. 1211, 440 U.S. 906, 59 L.Ed.2d 453, reversed 100 S.Ct. 383, 444 U.S. 164, 62 L.Ed.2d 332.—Nav Wat 1(6).

C.A.4 (N.C.) 1986. "Navigable water" and thus boundary of admiralty jurisdiction in tidal areas does not ebb and flow with the tide but extends to mean high watermark at all times. U.S.C.A. Const. Art. 3, § 2, cl. 2; 28 U.S.C.A. § 1333; Admiralty Jurisdiction Act, 46 U.S.C.A. § 740.—Hassinger v. Tideland Elec. Membership Corp., 781 F.2d 1022, certiorari denied Coast Catamaran Corporation v. Hassinger, 106 S.Ct. 3294, 478 U.S. 1004, 92 L.Ed.2d 709, certiorari denied 106 S.Ct. 3294, 478 U.S. 1004, 92 L.Ed.2d 709.—Adm 4.

C.A.10 (Okla.) 1979. Where river is navigable in fact, its tributary is also a "navigable water" of the United States for purposes of the Federal Water Pollution Control Act. Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), § 101 et seq. as amended 33 U.S.C.A. § 1251 et seq.—Ward v. Coleman, 598 F.2d 1187, certiorari granted U.S. v. Ward, 100 S.Ct. 291, 444 U.S. 939, 62 L.Ed.2d 305, reversed 100 S.Ct. 2636, 448 U.S. 242, 65 L.Ed.2d 742, rehearing denied 101 S.Ct. 37, 448 U.S. 916, 65 L.Ed.2d 1179.—Nav Wat 1(1).

C.A.3 (Pa.) 1973. Ohio river is "navigable water" and tort which occurs on Ohio river is governed by maritime law.—Earles v. Union Barge Line Corp., 486 F.2d 1097.—Adm 1.15; Nav Wat 1(6).

C.A.4 (Va.) 1991. "Navigable water," for purposes of admiralty jurisdiction, is body of water which, in its present configuration, constitutes highway of commerce, alone or together with another body of water, between states or with foreign countries over which commerce in its current mode is capable of being conducted.—Alford v. Appalachian Power Co., 951 F.2d 30.—Adm 4; Nav Wat 1(3).

C.C.A.5 (La.) 1935. Canal cut through private property and used by motor, oyster, and fishing luggers of ten tons and less, on payment of toll limited to professional fishermen, held "navigable water" to which admiralty and maritime jurisdiction extended. Const. art. 3, § 2.—The Lucky Lindy, 76 F.2d 561.—Adm 4.

C.D.Cal. 2001. Lake into which defendant discharged pollutants was "navigable water," and "water of United States" within meaning of Clean Water Act (CWA), prohibiting discharge of pollutants into such water; lake was popular destination for interstate and foreign tourists, it was used for fishing, water skiing, duck hunting, and other recreational activities, and it ebbed and flowed with the tide. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.—Colvin v. U.S., 181 F.Supp.2d 1050.—Environ Law 173.

S.D.Fla. 1971. Florida Bay, at Hammer Point, Key Largo, Florida is a "navigable water" of the United States.—U.S. v. Joseph G. Moretti, Inc., 331 F.Supp. 151, vacated in part 478 F.2d 418, on remand 387 F.Supp. 1404, reversed in part, vacated in part 526 F.2d 1306, on remand 423 F.Supp. 1197, vacated and remanded 592 F.2d 1189.—Nav Wat 1(6).

N.D.Ga. 1996. Unnamed tributary was "navigable water" as defined by the Clean Water Act where it intersected with a creek that flowed into another state. Clean Water Act, § 502(7), as amended, 33 U.S.C.A. § 1362(7).—State of Ga. v. City of East Ridge, Tenn., 949 F.Supp. 1571.—Environ Law 173.

W.D.La. 1985. "Navigable water" subject to admiralty jurisdiction includes waters that are navigable in fact, including man-made or artificial bodies of water.—Wilder v. Placid Oil Co., 611 F.Supp. 841, affirmed Sanders v. Placid Oil Co., 861 F.2d 1374.—Adm 4.

E.D.Mo. 1947. Where borrow pit between levee and Mississippi River was not used by anyone for navigation purposes except defendant and his father, and by them during hunting season to transport duck hunters from dock on pit to an island in river and opening between pit and river was so shallow that outboard motor on boat could not be used, borrow pit was not "navigable water" so as to give United States jurisdiction over a charge of negligent operation of a motor boat in the pit endangering lives of divers persons. Motorboat Act of 1940, § 14, 46 U.S.C.A. § 526m.—U.S. v. Ross, 74 F.Supp. 6.—Nav Wat 1(6).

E.D.Mo. 1947. The "navigable water" of the United States does not include every body of water, natural or artificial, which has any character or connection with a navigable stream through which a small boat can be pushed by oar or pole.—U.S. v. Ross, 74 F.Supp. 6.—Nav Wat 1(1).

W.D.Mo. 1980. Lake of the Ozarks, although entirely within State of Missouri, constitutes "navigable water" for purposes of federal admiralty jurisdiction. 28 U.S.C.A. § 1333; Suits in Admiralty Act, § 2, 46 U.S.C.A. § 742.—Cooper v. U.S., 489 F.Supp. 200, vacated 500 F.Supp. 191.—Adm 4.

S.D.N.Y. 1930. Hudson river in vicinity of Denning's Point is "navigable water."—The Robaliss III, 45 F.2d 199, modified Corby v. Ramsdell, 48 F.2d 701.—Nav Wat 1(6).

D.Or. 1969. Where tailrace was formed by water returning to navigable river after diversion for use in two plants and barges from 60 to 130 feet long and 18 to 28 feet wide frequently operated in it, tailrace was "navigable water" and employee's death occurring while he was attempting to move tractor off barge in tailrace was covered by Longshoremen's and Harbor Workers' Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, §§ 2, 2(4), 3(a), 33 U.S.C.A. §§ 902, 902(4), 903(a).—C.J. Montag & Sons, Inc. v. O'Leary, 304 F.Supp. 188.—Nav Wat 1(6); Work Comp 262.

E.D.Pa. 1951. Where point of accident in river was open water with sufficient depth, in view of soft mud bottom to permit vessel having existing draft of steamtug involved in accident to navigate, point was "navigable water", and vessels had paramount right to use river free from obstruction.—Petition of Martin, 102 F.Supp. 43.—Nav Wat 22(3).

Ark. 1915. That waters of lake are not adapted to purpose of navigation and that they can never be used for the purpose successfully as a financial venture held not exclusive test of "navigable water." A lake about 7 miles long and a half a mile wide, of an average depth of 18 feet, which was free from snags or other obstructions and once had probably been a part of the bed of a river, is a "navigable body of water"; it being of sufficient depth for use by the largest steamboats, and having been used, not only for outing and sporting purposes, but at times for the actual transportation of freight.—Barboro v. Boyle, 178 S.W. 378, 119 Ark. 377.

Cal.App. 2 Dist. 2000. Term "navigable water," as used in statute prohibiting discharge of a pollutant into navigable waters without the filing of an appropriate report, encompasses any river or stream that is a tributary of tidal waters. 33 U.S.C.A. § 1251 et seq.; West's Ann.Cal.Water Code §§ 13373, 13376.—People v. Ramsey, 94 Cal. Rptr.2d 301, 79 Cal.App.4th 621.—Environ Law 173.

Cal.App. 2 Dist. 1997. Pacific Ocean water that would occasionally flow inland over legal boundary of developer's beachfront property was not "navigable water," and developer's property thus was not subject to any public navigational or recreational rights landward of ordinary high tide line as it might exist from time to time; tidal waters above mean high tide line were not navigable waters that would be held in trust by State for benefit of public. Submerged Lands Act, § 2(a)(2), 43 U.S.C.A. § 1301(a)(2); West's Ann.Cal.Harb. & Nav.Code §§ 90, 100.—Lechuza Villas West v. California Coastal Com'n, 70 Cal.Rptr.2d 399, 60 Cal.App.4th 218, as modified on denial of rehearing, and review denied, certiorari denied 119 S.Ct. 163, 525 U.S. 868, 142 L.Ed.2d 133.—Nav Wat 1(6), 16, 29.

Ky. 1936. Operation of a ferry across a stream does not constitute such stream a "navigable water" throughout its length, nor do pleasure boats, whether rowboats or power launches, operated on such slack water, constitute "commerce" within the meaning of that term as applied to navigable streams.—Natcher v. City of Bowling Green, 95 S.W.2d 255, 264 Ky. 584.

La. 1944. "Navigable water" is water which, by its depth, width, and location, is rendered available for commerce, whether it is actually so used or not.—State v. Aucoin, 20 So.2d 136, 206 La. 787.

Md. 1971. "Navigable water" is defined as where the tide ebbs and flows.—Van Ruymbeke v. Patapsco Indus. Park, 276 A.2d 61, 261 Md. 470.—Nav Wat 1(4).

Mich. 1901. A bay or arm of one of the Great Lakes, some 4,000 acres in extent, which was pat-

ented to the state as swamp land, and which, though of sufficient depth for navigation where it opens into the lake, is not throughout the remainder of its extent of an average depth of more than two feet, and rarely more than three feet, and is covered through the summer with grass and rushes, is not "navigable water," but merely a marsh, and subject to private ownership. To be navigable in law it must be navigable in fact; that is, capable of being used by the public as a highway for the transportation of commerce. The body of water in question was the natural feeding pond of the duck and other water fowls. In their pursuit by canoe and flat-bottomed ducking boats the water might be navigated. But that was not commerce, and proves nothing. The same test would convert every pond and swamp capable of floating a boat into a navigable stream or lake. At common law the term "navigable" had a technical meaning, and was applied to all streams or bodies of water in which the tide ebbed and flowed. All such waters were public. That definition is not applicable in this country, and all waters are held navigable in law and subject to public use which are by their character capable of use as highways for purposes useful to trade or agriculture. It is the capability of being navigated for useful purposes which is the test.—*Baldwin v. Erie Shooting Club*, 87 N.W. 59, 127 Mich. 659.

Minn. 1947. "Navigable water" under federal law defined.—*State v. Longyear Holding Co.*, 29 N.W.2d 657, 224 Minn. 451.

N.J.Err. & App. 1935. State court held to have jurisdiction of action for death of employee sustained while assisting in removal of temporary piling connecting ends of two parallel piers projecting from shore into river, since place of death was "land" and not "navigable water," even though employee was precipitated into water by fatal blow.—*Baldwin v. Linde-Griffith Const. Co.*, 181 A. 35, 115 N.J.L. 608.—Adm 21.

N.J.Sup. 1941. The Atlantic Ocean, within territorial limits of New Jersey, is "navigable water" within Unemployment Compensation Act provision excluding from the act members of the crew of a vessel on navigable waters of United States. N.J.S.A. 43:21-19(i)(7)(C).—*Shore Fishery v. Board of Review of Unemployment Compensation Commission*, 21 A.2d 634, 127 N.J.L. 87.—Social S 366.

N.Y.A.D. 2 Dept. 1992. "Graven dock" in which ship repairmen were working at time scaffolding collapsed had to be regarded as "navigable water" rather than mere extension of "land," so that resulting personal injury action was governed by federal maritime law, though water had been pumped from graven dock before accident occurred. U.S.C.A. Const. Art. 3, § 2, cl. 1.—*Torres v. City of New York*, 581 N.Y.S.2d 194, 177 A.D.2d 97, leave to appeal denied 589 N.Y.S.2d 309, 80 N.Y.2d 759, 602 N.E.2d 1125, certiorari denied 113 S.Ct. 1584, 507 U.S. 986, 123 L.Ed.2d 151.—Adm 1.20(5).

N.Y.Sup. 1937. Oval-shaped lake covering area of about 70 acres, having inlet of two very small

creeks and outlet consisting of short gully with twelve-inch tile under road, was not "navigable water."—*Mix v. Tice*, 298 N.Y.S. 441, 164 Misc. 261.—Nav Wat 1(1).

N.Y.Dist.Ct. 1970. The Great South Bay in the town of Islip is not "navigable water" covered by conservation law, and town is authorized, by virtue of subdivisions of Town Law dealing with town ordinances, to regulate dredging in the bay. Navigation Law § 2, subd. 4; Conservation Law § 429-b; Town Law § 130, subds. 15, 18.—*People v. Gibson and Cushman of New York*, 314 N.Y.S.2d 476, 64 Misc.2d 138.—Nav Wat 1(6), 38.

Utah 1946. "Navigable water" is that which, by its depth, width and location, is rendered available for commerce, whether actually so used or not.—*Monroe v. State*, 175 P.2d 759, 111 Utah 1.—Nav Wat 1(3).

Wash. 1917. A lowland lake, covering an area of about 275 acres, 4.8 feet deep in its deepest place, its average depth in summer time being about 1.4 feet, and in ordinary high water being from 2½ to 3 feet, the banks being low and marshy, and the water being filled with willows, tules, and other vegetation, was not a "navigable water" within Const. art. 17, § 1, since navigable waters, within the constitutional provision, are waters navigable in fact.—*Neterer v. State*, 168 P. 170, 98 Wash. 635.

Wash. 1906. A lake on which a steamboat carrying pleasure parties is operated, and on which numerous small boats are used for rowing and fishing, the average depth of water being 16 feet, is a "navigable water."—*Kalez v. Spokane Valley Land & Water Co.*, 84 P. 395, 42 Wash. 43.

NAVIGABLE WATER OF THE UNITED STATES

C.A.11 (Fla.) 1995. Waterway is "navigable water of the United States," within meaning of Rivers and Harbors Act, if it is used, or is susceptible of being used, in its ordinary condition, as highway for commerce, over which trade and travel are or may be conducted in customary modes of trade and travel on water. 33 U.S.C.A. § 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Nav Wat 1(3).

C.A.11 (Fla.) 1995. To be "navigable water of the United States," within meaning of Rivers and Harbors Act, waterway must form, either by itself or by uniting with other waters, continued highway over which commerce is or may be carried on with other states or foreign countries in customary modes in which such commerce is conducted by water. 33 U.S.C.A. § 403.—*Lykes Bros., Inc. v. U.S. Army Corps of Engineers*, 64 F.3d 630.—Nav Wat 1(3).

C.A.11 (Fla.) 1995. District court's finding that creek was navigable only a few miles upstream from its mouth and was not "navigable water of the United States," subject to Army Corps of Engineers' jurisdiction under Rivers and Harbors Act, was not clearly erroneous; thus, state could not compel property owner to remove trees and fences blocking public access to creek. 33 U.S.C.A.

§ 403.—Lykes Bros., Inc. v. U.S. Army Corps of Engineers, 64 F.3d 630.—Nav Wat 1(7), 19.

E.D.Cal. 2002. Tributary of actually navigable waterway was itself “navigable water of the United States” within meaning of Clean Water Act, even though it flowed through underground pipeline on its way to waterway. Federal Water Pollution Control Act Amendments of 1972, § 502(7), as amended, 33 U.S.C.A. § 1362(7); 40 C.F.R. § 122.2.—California Sportfishing Protection Alliance v. Diablo Grande, Inc., 209 F.Supp.2d 1059.—Environ Law 173.

N.D.Cal. 1988. Property was not “navigable water of the United States” within meaning of Rivers and Harbors Act or regulations promulgated thereunder and Army Corps of Engineers thus had no jurisdiction over property on that basis; none of property was below the mean high water line, except certain elevations in culverts and in certain level portions of drainage ditches, and impact of those structures would not be considered in determining extent of Corps’ jurisdiction and in any event was insufficient. 33 U.S.C.A. §§ 401 et seq., 403.—Leslie Salt Co. v. U.S., 700 F.Supp. 476, reversed 896 F.2d 354, certiorari denied 111 S.Ct. 1089, 498 U.S. 1126, 112 L.Ed.2d 1194, on remand 820 F.Supp. 478, affirmed in part 55 F.3d 1388, certiorari denied Cargill, Inc. v. U.S., 116 S.Ct. 407, 516 U.S. 955, 133 L.Ed.2d 325.—Nav Wat 1(6).

D.Del. 1973. A body of water is “navigable water of the United States” if it is presently being used or is suitable for use for transportation and commerce, or if it has been so used or was suitable for such use in the past, or if it could be made suitable for such use in the future by reasonable improvements. Rivers and Harbors Appropriations Act of 1899, §§ 10, 13, 33 U.S.C.A. §§ 403, 407.—U.S. v. Cannon, 363 F.Supp. 1045.—Nav Wat 1(3).

D.Minn. 1978. Where Lake Minnetonka was located entirely within state of Minnesota, where its only outlet was creek whose lower stretches had never been, and were not susceptible to, interstate commercial use, and where lake formed no navigable interstate waterway connection, lake was not a “navigable water of the United States” within meaning and scope of Rivers and Harbors Appropriation Act of 1899. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403.—Minnehaha Creek Watershed Dist. v. Hoffman, 449 F.Supp. 876, affirmed in part, reversed in part 597 F.2d 617.—Nav Wat 1(6).

W.D.Va. 1938. Evidence established that the New river, arising in North Carolina and flowing across Virginia into West Virginia, where it joins the Gauley, forming the Kanawha, was not “navigable” except in certain short and isolated stretches, each within a single state, and hence that the United States could not regulate or obtain injunction restraining erection in West Virginia of dam and electric power plant on the New river on ground that it was a “navigable water of the United States.” Code Virginia 1936, § 3581(1) et seq.; Rivers and Harbors Act of 1890, §§ 7, 10, 26 Stat. 454; Rivers and Harbors Act of 1899, §§ 7, 9 et

seq., 33 U.S.C.A. § 401 et seq.; Federal Water Power Act of 1920, as amended, 16 U.S.C.A. §§ 791–823; Federal Power Act of 1935, 16 U.S.C.A. § 791a et seq.; U.S.C.A. Const. art. 1, § 8, cl. 3; 2 St. at Large, N.S., Va. c. 7, p. 317.—U.S. v. Appalachian Elec. Power Co., 23 F.Supp. 83, affirmed 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Nav Wat 1(7), 26(1).

NAVIGABLE WATERS

U.S.Ill. 1892. The term “navigable waters,” in England, is synonymous with “tide waters,” but in this country it is not confined to tide waters, but includes any waters on which commerce is carried on. Hence it includes the large rivers of the country, and also the Great Lakes.—Illinois Cent. R. Co. v. State of Illinois, 13 S.Ct. 110, 146 U.S. 387, 36 L.Ed. 1018.

U.S.La. 1900. The term “navigable waters,” within the meaning of Act Cong. Sept. 19, 1890, c. 907, 26 Stat. 454, making it a misdemeanor to obstruct a navigable water of the United States, has reference to commerce of a substantial character to be conducted thereon, and does not include a shallow pass or crevasse, caused by overflow of water from the Mississippi river, through which small boats sometimes passed, but which was never used for passengers or freight.—Leovy v. U.S., 20 S.Ct. 797, 177 U.S. 621, 44 L.Ed. 914.

U.S.Wash. 1909. The term “navigable waters,” as applied to the dominion of the national and state governments over shore lands and the rights which they have or can convey, means waters which are navigable in fact and not simply tidal waters.—McGilvra v. Ross, 30 S.Ct. 27, 215 U.S. 70, 54 L.Ed. 95.

C.A.D.C. 1992. Federal Energy Regulatory Commission (FERC) had licensing jurisdiction over hydroelectric project even if commerce did have to be portaged around stream on which project was located, as stream was no more than “interruption” in otherwise continuous interstate waterway and, thus, was within Federal Power Act’s definition of “navigable waters.” Federal Power Act, §§ 1 et seq., 3(8), 23(b), as amended, 16 U.S.C.A. §§ 792 et seq., 796(8), 817.—Consolidated Hydro, Inc. v. F.E.R.C., 968 F.2d 1258, 296 U.S.App.D.C. 387.—Electricity 10.

C.A.2 1979. “Navigable waters” within the original 1927 Longshoremen’s and Harbor Workers’ Compensation Act did not include extensions of land, and there was no coverage of an injury occurring on a structure permanently affixed to land. Longshoremen’s and Harbor Workers’ Compensation Act Amendments of 1972, § 3(a), 33 U.S.C.A. § 903(a).—Fusco v. Perini North River Associates, 601 F.2d 659, vacated 100 S.Ct. 697, 444 U.S. 1028, 62 L.Ed.2d 664, on remand 622 F.2d 1111, certiorari denied Sullivan v. Perini North River Associates, 101 S.Ct. 953, 449 U.S. 1131, 67 L.Ed.2d 119,

certiorari denied 101 S.Ct. 953, 449 U.S. 1131, 67 L.Ed.2d 119.—Work Comp 262.

C.A.2 1976. Claimant, who was clearly on a pier and terminal adjoining water, a part of which was used for loading and unloading vessels, at time of his injury, was injured on "navigable waters" within expanded definition provided by Longshoremen's and Harbor Workers' Compensation Act which includes any adjoining pier or other adjoining area customarily used by employer in loading, unloading, repairing or building a vessel and thus met situs test of the Act. Longshoremen's and Harbor Workers' Compensation Act, § 3(a) as amended 33 U.S.C.A. § 903(a).—Pittston Stevedoring Corp. v. Dellaventura, 544 F.2d 35, certiorari granted Northeast Marine Terminal Co., Inc. v. Caputo, 97 S.Ct. 522, 429 U.S. 998, 50 L.Ed.2d 607, affirmed 97 S.Ct. 2348, 432 U.S. 249, 53 L.Ed.2d 320.—Work Comp 262.

C.A.11 (Ala.) 1982. "Navigable waters" include the muds along the shore through which vessels are capable of running.—Orange Beach Water, Sewer, and Fire Protection Authority v. M/V Alva, 680 F.2d 1374.—Nav Wat 1(1).

C.A.9 (Cal.) 1978. The term "navigable waters" has been judicially defined to cover (1) nontidal waters which were navigable in the past or which could be made navigable in fact by "reasonable improvements," and (2) waters within the ebb and flow of the tide.—Leslie Salt Co. v. Froehke, 578 F.2d 742.—Nav Wat 1(3), 1(4).

C.A.9 (Hawaii) 1986. Shallowness of water, reefs and state regulations prohibiting boating in area did not preclude finding that waters were "navigable waters" for purposes of invoking admiralty jurisdiction, where waters in question were clearly subject to ebb and flow of tides.—Complaint of Paradise Holdings, Inc., 795 F.2d 756, certiorari denied Stone v. Paradise Holdings, Inc., 107 S.Ct. 649, 479 U.S. 1008, 93 L.Ed.2d 705.—Adm 4.

C.A.7 (Ind.) 1979. Congress wanted to give the term "navigable waters" as used in the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), the broadest possible constitutional interpretation. Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), § 502(7) as amended 33 U.S.C.A. § 1362(7).—U.S. v. Byrd, 609 F.2d 1204.—Environ Law 173.

C.A.6 (Mich.) 1999. Wetland areas are considered "navigable waters" for purposes of applying the Clean Water Act. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.—Michigan Peat, a Div. of Bay-Houston Towing Co. v. U.S. E.P.A., 175 F.3d 422, 1999 Fed.App. 155P, appeal after remand 19 Fed.Appx. 344, certiorari denied 122 S.Ct. 2619, 153 L.Ed.2d 803.—Environ Law 128; Nav Wat 1(6).

C.A.6 (Mich.) 1959. Waters in shallow channel in Lake St. Clair are "navigable waters" as being part of connecting waterway of Great Lakes, though such channel is not connected with channel through which large vessels pass. 18 U.S.C.A. § 7.—

Hoopengartner v. U.S., 270 F.2d 465.—Nav Wat 1(6).

C.A.2 (N.Y.) 1965. A river is "navigable waters" and hydroelectric projects thereon must be licensed by Federal Power Commission if (1) it presently is being used or is suitable for use, or (2) it has been used or was suitable for use in the past, or (3) it could be made suitable for use in the future by reasonable improvements. Federal Power Act, §§ 3(8), 23(b), 16 U.S.C.A. §§ 796(8), 817.—Rochester Gas & Elec. Corp. v. Federal Power Commission, 344 F.2d 594, certiorari denied 86 S.Ct. 72, 382 U.S. 832, 15 L.Ed.2d 75.—Nav Wat 1(3).

C.A.3 (Pa.) 1973. "Navigable waters" are those waters in United States which afford channel for useful commerce. Admiralty Jurisdiction Extension Act, 46 U.S.C.A. § 740.—Earles v. Union Barge Line Corp., 486 F.2d 1097.—Nav Wat 1(3).

C.A.5 (Tex.) 2001. Subsurface waters did not constitute "navigable waters" protected by Oil Pollution Act (OPA), and thus landowners could not recover under OPA for discharges of oil that allegedly contaminated groundwater under their property. 33 U.S.C.A. § 2701(21); 15 C.F.R. § 990.30.—Rice v. Harken Exploration Co., 250 F.3d 264, rehearing en banc denied 263 F.3d 167.—Environ Law 437.

C.A.5 (Tex.) 1967. Longshoreman injured while working on pier under which no small craft larger than a canoe could navigate was not injured upon the "navigable waters" of the United States and was not entitled to benefits under Longshoremen's and Harbor Workers' Act. Longshoremen's and Harbor Workers' Compensation Act, § 3(a), 33 U.S.C.A. § 903(a).—Nicholson v. Calbeck, 385 F.2d 221, certiorari denied 88 S.Ct. 790, 389 U.S. 1051, 19 L.Ed.2d 843, rehearing denied 89 S.Ct. 67, 393 U.S. 903, 21 L.Ed.2d 190.—Work Comp 93.

C.A.4 (Va.) 1995. Events giving rise to injuries to ship repairer's security guard when she stepped onto platform at end of gangway of ship docked alongside pier at naval base, lost her balance, and struck her nose on equipment stored on the pier met location requirement for admiralty jurisdiction; platform was within "navigable waters" of the United States, and mere fortuitous circumstance that the injuries were suffered on the pier rather than on the platform did not remove the incident from navigable waters. U.S.C.A. Const. Art. 3, § 2, cl. 1; 28 U.S.C.A. § 1333(1).—White v. U.S., 53 F.3d 43.—Adm 22.

C.A.9 (Wash.) 2002. Irrigation canals into which wastewaters from dairy operation were discharged were "navigable waters" under Clean Water Act (CWA), even though canal system flowed intermittently, as required for environmental group's CWA action against operation; canal system took water from river in spring and returned water to river throughout remainder of year by means of drainage and runoff. Federal Water Pollution Control Act Amendments of 1972, § 502(7), as amended, 33 U.S.C.A. § 1362(7).—Community Ass'n for Restoration of the Environment v. Henry Bosma Dairy, 305 F.3d 943.—Environ Law 173.

C.C.A.5 (La.) 1935. Waters navigable in fact for trade or commerce including canals and other waters privately owned or claimed are in law "navigable waters" for purpose of admiralty jurisdiction (Jud. Code § 24(3), 28 USCA § 41(3); Const. art. 3, § 2).—*The Lucky Lindy*, 76 F.2d 561.—Adm 4.

C.C.A.2 (N.Y.) 1936. Diver employed to help in building foundation for pier of bridge across Ohio river, injured while standing inside cofferdam on floating raft by premature explosion of dynamite charge which he had placed to remove boulder outside cofferdam, held not entitled to recover under federal statute, since waters within cofferdam were withdrawn from "navigable waters" to which statute applied. *Jones Act*, 46 U.S.C.A. § 688; *Longshoremen's and Harbor Workers' Compensation Act*, 33 U.S.C.A. § 901 et seq.; 77 P.S.Pa. § 1 et seq.—*Jeffers v. Foundation Co.*, 85 F.2d 24.—Adm 20.

C.C.A.5 (Tex.) 1946. "Tidewaters" are "navigable waters" but are not "streams" at all in the usual meaning of the term.—*State of Tex. v. Chuoke*, 154 F.2d 1, certiorari denied 67 S.Ct. 45, 329 U.S. 714, 91 L.Ed. 620.—Nav Wat 1(4); Waters 38.

C.C.A.4 (Va.) 1943. The employment of a foreman on a barge used for pouring concrete for a naval drydock, located adjacent to the Elizabeth river at the Norfolk navy yard at Portsmouth, Virginia, and which was within the range of the mean low tide and mean high tide was "maritime" in nature and occurred on "navigable waters" within jurisdiction of a federal court to award compensation under the *Longshoremen's Compensation Act* for the foreman's death. *Longshoremen's and Harbor Workers' Compensation Act* § 1 et seq., and § 2(4), 33 U.S.C.A. § 901 et seq. and § 902(4).—*Travelers Ins. Co. v. Branham*, 136 F.2d 873.—Work Comp 262.

S.D.Ala. 1947. Waters at high tide overflowing marsh island bounded by Mobile Bay and Mobile river were not "navigable waters" within rule that soil beneath navigable waters vested in Alabama when it became a state.—*U.S. v. Property on Pinto Island*, 74 F.Supp. 92, reversed U.S. v. Turner, 175 F.2d 644, certiorari denied 70 S.Ct. 92, 338 U.S. 851, 94 L.Ed. 521.—Nav Wat 1(6).

S.D.Ala. 1947. "Navigable waters", the soil beneath which vested in Alabama when it became a state, means waters actually navigable for commercial use, and does not contemplate swamp island or marsh islands though such areas, or a part thereof, be submerged at high tide or even at all times.—*U.S. v. Property on Pinto Island*, 74 F.Supp. 92, reversed U.S. v. Turner, 175 F.2d 644, certiorari denied 70 S.Ct. 92, 338 U.S. 851, 94 L.Ed. 521.—Nav Wat 1(1).

D.Ariz. 1975. Legal definition of "navigable waters" or "waters of the United States," within scope of Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), includes any waterway within United States and also normally dry arroyos through which water may flow, where such water will ultimately end up in public waters such as a river or stream, tributary to a river or

stream, lake, reservoir, bay, gulf, sea or ocean either within or adjacent to the United States. Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), §§ 504, 505, 33 U.S.C.A. §§ 1364, 1365.—*U.S. v. Phelps Dodge Corp.*, 391 F.Supp. 1181.—*Environ Law* 173.

M.D.Fla. 1992. For purposes of statute prohibiting obstructions in navigable waters of United States, it is immaterial whether submerged structure is covered by soft mud; "navigable waters" include muds along shore through which vessels are capable of running. 33 U.S.C.A. § 403.—*Pelican Marine Carriers, Inc. v. City of Tampa*, 791 F.Supp. 845, affirmed 4 F.3d 999.—Nav Wat 19, 36(1).

M.D.Fla. 1967. "Navigable waters" include lakes, rivers, bays, or harbors, and all waters capable of practicable navigation for useful purposes, whether affected by tides or not, and whether the water is navigable or not, in all its parts toward the outside lines or elsewhere, or whether the waters are navigable during the entire year or not.—*U.S. v. 2,899.17 Acres of Land, More or Less, in Brevard County, State of Fla.*, 269 F.Supp. 903.—Nav Wat 1(3).

S.D.Ga. 1990. J. Strom Thurmond Lake did not constitute "navigable waters," and, thus, alleged injury in lake was outside admiralty jurisdiction, even though lake was interstate body of water; there was no contemporary navigability in fact. U.S.C.A. Const. Art. 3, §.2; 28 U.S.C.A. § 1331(1).—*Seymour v. U.S.*, 744 F.Supp. 1161.—Nav Wat 1(6).

N.D.Iowa 1968. Waters constitute "navigable waters" of United States within meaning of congressional acts, in contradistinction from "navigable waters" of states, when waters form, in their ordinary condition by themselves or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in customary modes in which such commerce is conducted by water. 46 U.S.C.A. §§ 183, 188.—*In re Builders Supply Co.*, 278 F.Supp. 254.—Nav Wat 1(1).

E.D.La. 1982. Where both waterways which would be closed by proposed construction of levee had direct hydrological connection to Gulf of Mexico through connecting canals, bayous, lakes, and a bay and were subject to ebb and flow of tide, waterways were "navigable waters" within meaning of *Rivers and Harbors Appropriations Act*, thus permitting Army Corps of Engineers to assert its jurisdiction over levee project. *Rivers and Harbors Appropriations Act of 1899*, § 10, 33 U.S.C.A. § 403.—*Bayou Des Familles Development Corp. v. U.S. Corps of Engineers*, 541 F.Supp. 1025.—Nav Wat 1(7).

W.D.La. 1981. In reference, in Clean Water Act, to "navigable waters," Congress was not referring to navigable waters in usual physical sense. Federal Water Pollution Control Act Amendments of 1972, § 101(a)(1), 33 U.S.C.A. § 1251(a)(1).—*Avoyelles Sportsmen's League, Inc. v. Alexander*, 511 F.Supp. 278, affirmed in part, reversed in part 715 F.2d 897.—Nav Wat 1(2).

D.Mass. 1979. Aberjona River falls within definition of "navigable waters" for purposes of Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act). Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), § 502(7) as amended 33 U.S.C.A. § 1362(7).—U. S. v. D'Annolfo, 474 F.Supp. 220.—Nav Wat 1(6).

W.D.Mich. 1985. Term "navigable waters," as used in Clean Water Act's definition of "discharge of pollutant" [33 U.S.C.A. § 1362(12)], did not include groundwater; thus, citizens' suit could not be maintained against federal government based on Coast Guard's release of contaminants into the ground, even though contaminants eventually were discharged into bay. Federal Water Pollution Control Act Amendments of 1972, § 502(12) as amended, 33 U.S.C.A. § 1362(12).—Kelley for and on Behalf of People of State of Mich. v. U.S., 618 F.Supp. 1103.—Environ Law 173, 226.

D.Minn. 1956. Where a boating accident occurred on Lake Nipigon, Ontario, Canada, a lake connected to Lake Superior by a river which was not navigable in fact, and which never had been used as a highway of commerce between the United States and Canada, and never would be susceptible of such commerce, such river and lake from which it flowed could not be considered as a "navigable river" and "navigable waters" respectively within constitutional concept of admiralty jurisdiction, and therefore federal district court lacked admiralty jurisdiction over petition for exoneration from liability, and of action for damages arising from such accident. 46 U.S.C.A. §§ 183–189; Admiralty Rule 51, 28 U.S.C.A.; U.S.C.A.Const. art. 1, § 8.—Petition of Keller, 149 F.Supp. 513.—Adm 4.

D.N.M. 1995. Protections of Clean Water Act (CWA), which protects "navigable waters," reach as far as interstate commerce clause allows. U.S.C.A. Const. Art. 1, § 8, cl. 3; Federal Water Pollution Control Act Amendments of 1972, §§ 101, 402(a), 502(7), as amended, 33 U.S.C.A. §§ 1251, 1342(a), 1362(7); 40 C.F.R. § 230.3(s).—Friends of Santa Fe County v. LAC Minerals, Inc., 892 F.Supp. 1333.—Environ Law 173.

E.D.N.Y. 2001. Pond and creek into which pollutants were discharged were waters of United States, and thus "navigable waters," for purpose of imposing liability under Clean Water Act (CWA); both were tributaries of lake, which in turn flowed into navigable bay. Federal Water Pollution Control Act Amendments of 1972, § 502(7), as amended, 33 U.S.C.A. § 1362(7).—Aiello v. Town of Brookhaven, 136 F.Supp.2d 81.—Environ Law 173.

N.D.N.Y. 1986. Lake, which at time of pleasure boat accident, was nothing more than landlocked body of water located entirely within state of New York, was not "navigable waters" for admiralty jurisdiction purposes.—Reynolds v. Bradley, 644 F.Supp. 42.—Adm 4.

E.D.N.C. 1953. Under law of North Carolina all water courses which are navigable in fact are regarded as "navigable waters" in law.—Swan Island

Club, Inc. v. White, 114 F.Supp. 95, affirmed 209 F.2d 698.—Nav Wat 1(3).

E.D.N.C. 1953. Shallow waters adjacent to island in Currituck Sound, which formed a link of inland waterway with termini in Atlantic Ocean and was usable generally by pleasure and cargo vessels, were "navigable waters" under North Carolina Law, though only two or three feet deep under normal conditions.—Swan Island Club, Inc. v. White, 114 F.Supp. 95, affirmed 209 F.2d 698.—Nav Wat 1(6).

D.Or. 1964. A small inland body of water with no outlet to any other lake which should be considered navigable in fact, nor which could be made susceptible to navigation by any reasonable improvement did not constitute "navigable waters" of the United States, and fact the United States owned land surrounding the lake, as part of a national forest, was immaterial in determining whether the lake could be considered navigable waters of the United States. U.S.C.A.Const. art. 1, § 8, cl. 3.—Johnson v. Wurthman, 227 F.Supp. 135.—Nav Wat 1(3).

D.Puerto Rico 1974. "Navigable waters" may be determined by whether they are, in fact, navigable, that is whether a boat could travel there, regardless of whether such waters are influenced by the tide, are landlocked or open, or are salt or fresh.—Caraballo v. Autoridad de Los Puertos de Puerto Rico, 388 F.Supp. 308.—Nav Wat 1(3).

E.D.Tex. 1989. Bayou was "navigable waters," within meaning of Suits in Admiralty Act, where bayou was subject to tidal influence, and had actual capability of supporting navigation, although bayou traffic may not have been commercial. Suits in Admiralty Act, § 1 et seq., 46 U.S.C.A. § 741 et seq.—Duke v. U.S., 711 F.Supp. 332.—Nav Wat 1(6).

E.D.Tex. 1989. The term "navigable waters" means all waters of the United States, comprising not only traditionally navigable waters, but all other waters interconnected therewith, including territorial sea and all nonnavigable intrastate tributaries whose misuse might affect interstate commerce.—Hanson v. U.S., 710 F.Supp. 1105.—Nav Wat 1(1).

E.D.Va. 1966. Pier on which shipowner's employee was injured in accident was "extension of the land," and injury did not occur on "navigable waters."—Sanderlin v. Old Dominion Stevedoring Corp., 261 F.Supp. 281, reversed and remanded 385 F.2d 79, on remand 281 F.Supp. 1015.—Adm 22.

E.D.Va. 1965. Water under pier of sufficient depth to permit a small barge or a small launch or rowboat to go between pilings was not sufficient to constitute "navigable waters" of the United States, within meaning of Longshoremen's and Harbor Workers' Compensation Act.—East v. Oosting, 245 F.Supp. 51, reversed Marine Stevedoring Corp. v. Oosting, 398 F.2d 900, certiorari granted Nacirema Operating Co v. Johnson, 89 S.Ct. 444, 393 U.S. 976, 21 L.Ed.2d 437, reversed 90 S.Ct. 347, 396 U.S. 212, 24 L.Ed.2d 371, rehearing denied 90 S.Ct. 895, 397 U.S. 929, 25 L.Ed.2d 109, rehearing denied

Traynor v. Johnson, 90 S.Ct. 896, 397 U.S. 929, 25 L.Ed.2d 109.—Work Comp 130.

E.D.Wash. 1994. Manmade ponds did not constitute "navigable waters" within meaning of Clean Water Act (CWA); Environmental Protection Agency's (EPA's) definition of navigable waters included only "natural" ponds. Federal Water Pollution Control Act Amendments of 1972, § 502(7), as amended, 33 U.S.C.A. § 1362(7).—Washington Wilderness Coalition v. Hecla Min. Co., 870 F.Supp. 983.—Environ Law 173.

Ala.App. 1917. Houseboat towed into creek where it was tied up and later sunk, waters of creek at that point being susceptible of navigation, was sunk in "navigable waters."—De Bardeleben Coal Co. v. Cox, 76 So. 409, 16 Ala.App. 172, certiorari denied Ex parte Cox, 76 So. 911, 200 Ala. 553.—Nav Wat 24.

Fla. 1927. "Navigable waters" include all waters capable of practical navigation for useful purposes, whether affected by tides or not. The "navigable waters" in the state include lakes, rivers, bays, or harbors, and all waters capable of practical navigation for useful purposes, whether affected by tides or not, and whether the water is navigable or not in all its parts towards the outside lines, or whether the waters are navigable during the entire year or not.—Martin v. Busch, 112 So. 274, 93 Fla. 535.—Nav Wat 1(3).

Fla. 1927. "Navigable waters" include all waters capable of practical navigation for useful purposes, whether affected by tides or not.—Martin v. Busch, 112 So. 274, 93 Fla. 535.—Nav Wat 1(3).

Ga. 1976. Tidewaters on shores bordering Atlantic Ocean were "navigable waters" as defined in 1902 act which fixed boundaries of land adjacent to or bordering on tidewaters and which contemplated only categories of nonnavigable and navigable tidewaters. Code, §§ 85-1307 to 85-1309.—State v. Ashmore, 224 S.E.2d 334, 236 Ga. 401, certiorari denied Jack P. Ashmore, Jr. and R. Walter Ashmore, III v. Georgia., 97 S.Ct. 90, 429 U.S. 830, 50 L.Ed.2d 93, appeal after remand Lines v. State, 264 S.E.2d 891, 245 Ga. 390.—Nav Wat 1(6).

Ind.App. 2002. Casino boat was not located in "navigable waters" for purposes of Jones Act, and thus, due to exclusivity of workers' compensation laws, trial court did not have jurisdiction to hear action by casino former employees for injuries suffered while on working on boat, although small pleasure craft could navigate the waters; boat was located in a small, man-made, rectangular area of water that was dug out of dry land and connected to creek by a small opening, and opening was too narrow and shallow for commercial vessels to travel from the area, through creek, and into lake. Jones Act, 46 App.U.S.C.A. § 688.—Soloman v. Blue Chip Casino, Inc., 772 N.E.2d 515, transfer denied, and transfer denied.—Work Comp 2085.

Kan. 1927. The terms public waters and "navigable waters" are ordinarily synonymous. The term private waters is ordinarily used to designate non-navigable waters. The title to the beds of nonnavigable

rivers is in the riparian owners and not in the state.—Webb v. Board of Com'rs of Neosho County, 257 P. 966, 124 Kan. 38.

Kan. 1925. Terms "public waters" and "navigable waters" are ordinarily synonymous.—Piazek v. Drainage Dist. No. 1 of Jefferson County, 237 P. 1059, 119 Kan. 119.—Nav Wat 1(1).

Md. 1956. Where a stretch of river is navigable lengthwise, all waters between opposite shores or banks are comprehended within terms "navigable waters" as used in statute prohibiting issuance of any patent for land covered by navigable waters. Code 1951, art. 54, § 48.—Wagner v. City of Baltimore, 124 A.2d 815, 210 Md. 615.—Nav Wat 1(1).

Md.App. 1978. For purposes of rule that title to all navigable waters and to soil below mean high-water mark of those waters is vested in the state unless it is included in some grant by the state made prior to March 3, 1862, waters are deemed "navigable waters" if and only if they are subject to ebb and flow of tides.—Wicks v. Howard, 388 A.2d 1250, 40 Md.App. 135, certiorari denied 283 Md. 740.—Nav Wat 1(4).

Mich. 1907. The terms "tide waters" and "navigable waters" are used synonymously in England.—Olds v. Commissioner of State Land Office, 112 N.W. 952, 150 Mich. 134.

Mich. 1886. "Navigable waters," as used in Ordinance 1787, providing that the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between them, shall be common highways and forever free, does not include every little rill or brook whose waters finally reach these great highways. It was intended to, and did, apply only to such streams as were then common highways for canoes or bateaux in the commerce between the northwest wilderness and the settled portions of the United States and foreign countries, and as to such rivers not then in use as would by law be embraced in the definition of navigable waters.—Burroughs v. Whitwam, 26 N.W. 491, 59 Mich. 279.

Mich.App. 1974. Term "navigable waters" in statute providing that people have right to catch fish in any of navigable waters of state includes those waters which are suitable for public recreational use. M.C.L.A. § 307.41.—Kelley ex rel. MacMullen v. Hallden, 214 N.W.2d 856, 51 Mich. App. 176.—Fish 3.

Minn. 1952. "Navigable waters" are waters which are used or usable as highways of commerce.—Bingenheimer v. Diamond Iron Min. Co., 54 N.W.2d 912, 237 Minn. 332.—Nav Wat 1(1).

Miss. 1990. "Navigable waters" are those waters which are navigable in fact; waters navigable by loggers, fishermen, and pleasure boaters are navigable in fact.—Ryals v. Pigott, 580 So.2d 1140, certiorari denied O'Quinn v. Ryals, 112 S.Ct. 377, 502 U.S. 940, 116 L.Ed.2d 328.—Nav Wat 1(3), 1(5).

N.Y.A.D. 2 Dept. 1990. Longshoreman who was injured when he was operating a forklift, on a dock, as part of his longshoreman's duties, was working

upon "navigable waters" when he sustained his injuries, and thus exclusive remedy provision of the Longshore and Harbor Workers' Compensation Act barred forklift manufacturer's claim for contribution from longshoreman's employer, asserted in longshoreman's personal injury suit against manufacturer. Longshore and Harbor Workers' Compensation Act, §§ 1 et seq., 3(a), 5(a), 33 U.S.C.A. §§ 901 et seq., 903(a), 905(a).—*Colamarino v. City of New York*, 560 N.Y.S.2d 660, 166 A.D.2d 404.—Work Comp 2085.

N.Y.A.D. 3 Dept. 1940. Where referee found that at a certain bay length of railroad bridge from high water line to high water line was 1,053 feet and at a certain creek length of bridge from county line to high water line was 267 feet, referee erroneously concluded that because all navigation had to pass through 35-foot openings provided in each bridge by railroad company, only waters which passed through those openings could properly be said to be public "navigable waters," and that occupation was not taxable as a "special franchise" within statute because crossing was less than 250 feet in length. Tax Law, § 2, subd. 7.—*People ex rel. New York Central R. Co. v. State Tax Commission*, 16 N.Y.S.2d 812, 258 A.D. 356, affirmed 29 N.E.2d 932, 284 N.Y. 616.—Tax 144.

N.Y.Sup. 1973. Term "navigable waters," as applied to the dominion of the national and state governments over shore lands and the rights which they have or can convey, means waters which are navigable in fact, and not simply tidal waters.—*State v. Bishop*, 348 N.Y.S.2d 990, 75 Misc.2d 787, reversed 359 N.Y.S.2d 817, 46 A.D.2d 654.—Nav Wat 36(3).

N.Y.Ct.Cl. 1955. Oswego Canal, which was navigable channel and part of state canal system connecting with other navigable streams and bodies of water over all of which interstate and international commerce was conducted, together with other waters, into which it flowed, were "navigable waters" within purview of Jones Act, Jones Act, 46 U.S.C.A. § 688.—*Maloney v. State*, 141 N.Y.S.2d 207, 207 Misc. 894, affirmed 154 N.Y.S.2d 132, 2 A.D.2d 195, appeal granted, reargument denied 157 N.Y.S.2d 924, 2 A.D.2d 872, affirmed 165 N.Y.S.2d 465, 3 N.Y.2d 356, 144 N.E.2d 364.—Nav Wat 1(6).

N.Y.City Civ.Ct. 1979. Collision taking place between wooden sailboat and fiberglass sailboat near center of bay, at which water level was between 10½ to 11 feet, had occurred in "navigable waters" within meaning of statute providing that boat owner is liable for property damage incurred due to negligent use or operation of his vessel in navigable waters by any person having owner's express or implied permission. Navigation Law § 48.—*LeSauvage v. Freedman*, 419 N.Y.S.2d 1018, 100 Misc.2d 857.—Collision 115.

N.C. 1941. "Navigable waters" are waters which are navigable in fact and which by themselves or in connection with other waters form a continuous channel for commerce with foreign countries or among the states.—*Perry v. Morgan*, 14 S.E.2d 46, 219 N.C. 377.—Nav Wat 1(1).

N.C. 1938. The term "navigable waters" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the states.—*Home Real Estate Loan & Ins. Co. v. Parmele*, 197 S.E. 714, 214 N.C. 63.—Nav Wat 1(1).

N.C. 1938. The English common-law rule that streams are navigable only as far as tidewater extends is not the rule in the United States, but the term "navigable waters" in the United States has reference to commerce of a substantial and permanent character which is or may be conducted thereon.—*Home Real Estate Loan & Ins. Co. v. Parmele*, 197 S.E. 714, 214 N.C. 63.—Nav Wat 1(3), 1(4).

N.C. 1938. Any waters, whether sounds, bays, rivers, or creeks, which are wide enough and deep enough for the navigation of sea vessels are "navigable waters."—*Home Real Estate Loan & Ins. Co. v. Parmele*, 197 S.E. 714, 214 N.C. 63.—Nav Wat 1(3).

N.C. 1938. Marsh land exposed at low tide and covered at high tide by water to a depth enabling crafts drawing not more than 20 inches to operate thereon was not covered by "navigable waters," as respects whether owner had merchantable title to land.—*Home Real Estate Loan & Ins. Co. v. Parmele*, 197 S.E. 714, 214 N.C. 63.—Nav Wat 36(3).

N.C. 1895. "Navigable waters" include all those which afford a channel for useful commerce.—*Farmers' Co-operative Mfg. Co. v. Albemarle & R.R.*, 23 S.E. 43, 117 N.C. 579, 53 Am.St.Rep. 606, 29 L.R.A. 700.

S.C. 1901. In this country the tides have no relevancy to navigability. It was otherwise in England, whence the common law and its terminology came. There "tide waters" and "navigable waters" were convertible terms. Here, if the water course is navigable, it is so because the depth and width of it are sufficient to float useful commerce. If the depth and width of a stream are augmented by a periodical increase of water, called "tide," that fact may make a stream navigable at those points in it where it is so in fact, to wit, in its channel, but not navigable where it is not so in fact, to wit, out of the channel, in the marshes.—*Alston v. Limehouse*, 39 S.E. 188, 60 S.C. 559.

Tex. 1943. The bays, inlets, and other waters along the Gulf Coast which are subject to the ebb and flow of the tide of the Gulf of Mexico are "navigable waters."—*Lorino v. Crawford Packing Co.*, 175 S.W.2d 410, 142 Tex. 51.—Nav Wat 1(6).

Wash. 1955. Term "navigable waters" as used in constitutional provision making water and beds of such bodies of water property of the state, includes only such waters as are navigable for general commercial purposes. Const. art. 17, § 1.—*Kemp v. Putnam*, 288 P.2d 837, 47 Wash.2d 530.—Nav Wat 36(1).

Wis. 1983. Term "navigable waters" within meaning of statutes prohibiting construction or placement of any structure or deposit of any mate-

rial in “navigable waters” without permit, for purpose of establishing state’s jurisdiction, are waters that are navigable in fact, and once state has proven that body of water is navigable in fact, it has established its jurisdiction; one who objects to state’s jurisdiction on basis that body of water over which state is asserting jurisdiction is artificial water created on private land has burden of persuasion on that fact by preponderance of evidence. W.S.A. 30.10, 30.12, 30.15.—State v. Bleck, 338 N.W.2d 492, 114 Wis.2d 454.—Nav Wat 1(3).

Wis. 1938. As used in provision of ordinance of 1787 that “navigable waters” leading into the Mississippi and the St. Lawrence and “carrying places” between them shall be common highways, the quoted phrases are not limited to waters and carrying places which were actually parts of substantial, important commercial routes when the ordinance was enacted, but there is a material distinction between the phrases, and a “carrying place” exists only in connection with the use of navigable waters as a commercial route and includes only carrying places which have been located and were in use as such at the time of enactment of the ordinance. Northwest Territorial Government Ordinance, art. 4.—Lundberg v. University of Notre Dame, 282 N.W. 70, 231 Wis. 187, rehearing denied 285 N.W. 839, 231 Wis. 187.—Nav Wat 1(6).

Wis. 1938. A small, landlocked, spring-fed lake, which was in no substantial sense connected with or a part of a transportation route or chain of lakes and rivers, was not “navigable” within terms of provision of ordinance of 1787 that “navigable waters” leading into the Mississippi and the St. Lawrence shall be common highways. Northwest Territorial Government Ordinance, art. 4; Const. art. 9, § 1.—Lundberg v. University of Notre Dame, 282 N.W. 70, 231 Wis. 187, rehearing denied 285 N.W. 839, 231 Wis. 187.—Nav Wat 1(6).

Wis.App. 1987. Term “navigable waters” within meaning of statute providing Department of Natural Resources with authority over navigable waters means waters that are navigable in fact. W.S.A. 30.01 et seq.—Village of Menomonee Falls v. Wisconsin Dept. of Natural Resources, 412 N.W.2d 505, 140 Wis.2d 579, review denied.—Nav Wat 1(3).

NAVIGABLE WATERS OF PUERTO RICO

D.Puerto Rico 1975. Words “harbor,” “port,” and “navigable waters of Puerto Rico,” as used throughout the Dock and Harbor Act of 1969 mean any body of water where pilotage is required by the Ports Authority. 23 L.P.R.A. § 2401 et seq.—Campos v. Puerto Rico Sun Oil Co., Inc., 392 F.Supp. 524, reversed 536 F.2d 970.—Pilots 7.

NAVIGABLE WATERS OF THE STATES

C.C.A.4 (Va.) 1939. Where interstate waters are capable of promoting interstate commerce to a substantial degree, they are said to be “waters of the United States,” and they constitute “navigable waters of the United States” in contra-distinction from “navigable waters of the states” when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway

over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water.—U.S. v. Appalachian Elec. Power Co., 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Commerce 82.35.

NAVIGABLE WATERS OF THE UNITED STATES

U.S.Va. 1940. Waters are “navigable waters of the United States” when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary mode in which such commerce is conducted by water. U.S.C.A. Const. art. 1, § 8, cl. 3.—U.S. v. Appalachian Elec. Power Co., 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Commerce 82.35.

C.A.D.C. 1979. Term “navigable waters of the United States,” within provision of Rivers and Harbors Appropriation Act of 1899 making it unlawful to excavate or fill or in any manner alter or modify course, location, condition, or capacity of any lake or of the channel of any navigable water of the United States, does not refer to all waters that may be used in, or the use of which can affect, interstate commerce, but refers only to those waters that by themselves or by joining with others cross state borders. Rivers and Harbors Appropriation Act of 1899, § 10, 33 U.S.C.A. § 403.—National Wildlife Federation v. Alexander, 613 F.2d 1054, 198 U.S.App.D.C. 321, appeal after remand 665 F.2d 390, 214 U.S.App.D.C. 234.—Nav Wat 1(3).

C.A.2 1994. Because LHWCA applies extraterritorially, phrase “navigable waters of the United States” includes the high seas. Longshore and Harbor Workers’ Compensation Act, § 3(a), as amended, 33 U.S.C.A. § 903(a).—Kollias v. D & G Marine Maintenance, 29 F.3d 67, certiorari denied 115 S.Ct. 1092, 513 U.S. 1146, 130 L.Ed.2d 1061.—Intern Law 7; Work Comp 260.

C.A.4 1978. Submarine shop and foundry were included in statutory concept of “navigable waters of the United States,” under Longshoremen’s and Harbor Workers’ Compensation Act, since they were located in an area adjoining such waters “customarily used by an employer in * * * repairing, or building a vessel.” Longshoremen’s and Harbor Workers’ Compensation Act, § 3(a) as amended 33 U.S.C.A. § 903(a).—Newport News Shipbuilding & Dry Dock Co. v. Graham, 573 F.2d 167, certiorari denied Newport News Shipbuilding and Dry Dock Company v. Jones, 99 S.Ct. 563, 439 U.S. 979, 58 L.Ed.2d 649.—Work Comp 262.

C.A.5 (La.) 1988. “Navigable waters of the United States” are those waters capable, in fact, of navigation in interstate travel or commerce, and distinctions between natural and man-made bodies

of water are immaterial.—*Sanders v. Placid Oil Co.*, 861 F.2d 1374.—*Nav Wat* 1(3).

C.A.8 (Minn.) 1979. Where lake was located entirely within the State of Minnesota, with creek as its sole connecting waterway, the upper portion of such creek was navigable, but the remainder of the creek was not, the lake and the upper portion of creek, although navigable in fact, did not constitute "navigable waters of the United States" within meaning of Rivers and Harbors Appropriation Act, since the waters did not form, in themselves or in conjunction with other navigable waters, a continual highway over which interstate commerce could be conducted. *Rivers and Harbors Appropriation Act* of 1899, § 10, 33 U.S.C.A. § 403.—*Minnehaha Creek Watershed Dist. v. Hoffman*, 597 F.2d 617.—*Nav Wat* 1(6).

C.A.5 (Miss.) 1986. Under the Longshoremen's and Harbor Workers' Compensation Act, which authorizes payment of compensation for disability or death resulting from injury upon navigable waters of the United States, "navigable waters of the United States" includes the high seas, which begin at line three miles offshore. Longshore and Harbor Workers' Compensation Act, § 3(a), 33 U.S.C.A. § 903(a).—*Reynolds v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 788 F.2d 264, certiorari denied 107 S.Ct. 278, 479 U.S. 885, 93 L.Ed.2d 253.—*Work Com* 262.

C.A.3 (N.J.) 1974. For purpose of determining what waters are "navigable waters of the United States" within meaning of statute requiring permit from Secretary of Army to undertake dredging or filling operations in navigable waters of the United States, the test, as regards nontidal waters, is actual or reasonably potential navigability while, in tidal waters, the test is the ebb and flow of tide. *Rivers and Harbors Appropriation Act* of 1899, § 10, 33 U.S.C.A. § 403.—*U.S. v. Stoeco Homes, Inc.*, 498 F.2d 597, certiorari denied 95 S.Ct. 1124, 420 U.S. 927, 43 L.Ed.2d 397.—*Nav Wat* 7, 38.

C.A.10 (Utah) 1974. Phrase "navigable waters of the United States," within the Rivers and Harbors Act, contemplates a body of water forming a continued highway over which commerce is or may be carried on with other states or foreign countries by water and, thus, does not include landlocked intrastate lakes. *Rivers and Harbors Appropriation Act* of 1899, §§ 9, 10, 13, 33 U.S.C.A. §§ 401, 403, 407.—*Hardy Salt Co. v. Southern Pac. Transp. Co.*, 501 F.2d 1156, certiorari denied *Sanders Brine Shrimp Co. v. Southern Pacific Transportation Co.*, 95 S.Ct. 515, 419 U.S. 1033, 42 L.Ed.2d 308.—*Nav Wat* 1(3).

C.C.A.4 (Va.) 1939. Where interstate waters are capable of promoting interstate commerce to a substantial degree, they are said to be "waters of the United States," and they constitute "navigable waters of the United States" in contra-distinction from "navigable waters of the states" when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary

modes in which such commerce is conducted by water.—*U.S. v. Appalachian Elec. Power Co.*, 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—*Commerce* 82.35.

C.C.A.4 (Va.) 1939. Evidence held to establish that New River at Radford, Va., arising in North Carolina and flowing across Virginia into West Virginia, where it joins a navigable river, and having a steep gradient and many rapids, is not a "navigable river of the United States," notwithstanding some evidence of use of bateaux or keel-boats, and hence that dam on such river was not in "navigable waters of the United States" so as to authorize injunction against its erection on ground it was an obstruction. Code Va.1936, §§ 3581(1) to 3581(16); Acts W.Va.1915, c. 17; Rivers and Harbors Act 1890, 26 Stat. 426; Rivers and Harbors Act 1899, 33 U.S.C.A. § 401 et seq.; Federal Water Power Act 1920, §§ 1, 3, 4(d), 10, 11, 18, 23, 16 U.S.C.A. §§ 792, 796, 797(d), 803, 804, 811, 817; Federal Power Act 1935, 16 U.S.C.A. § 824 et seq.—*U.S. v. Appalachian Elec. Power Co.*, 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—*Nav Wat* 1(7), 26(1).

N.D.Cal. 1974. Regulations of United States Army Corps of Engineers which further define "navigable waters of the United States" as extending landward to the mean higher high-water line for Pacific Coast purposes is a reasonable interpretation of congressional definition "waters of the United States" in Federal Water Pollution Control Act. Federal Water Pollution Control Act, § 1 et seq., 33 U.S.C.A. § 1151 et seq.; Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 101(a, d), 301, 301(a), 402, 404, 502(6, 7), (12)(A), 33 U.S.C.A. §§ 1251 et seq., 1251(a, d), 1311, 1311(a), 1342, 1344, 1362(6, 7), (12)(A); Rivers and Harbors Appropriation Act of 1899, § 9 et seq., 33 U.S.C.A. § 401 et seq.; 43 U.S.C.A. §§ 982, 983.—*Leslie Salt Co. v. Froehlike*, 403 F.Supp. 1292, opinion supplemented *Sierra Club v. Leslie Salt Co.*, 412 F.Supp. 1096, reversed in part, modified in part 578 F.2d 742, reversed in part, modified in part 578 F.2d 742.—*Environ Law* 173.

D.Md. 1965. A dock at a steel plant even though constructed over navigable waters was an extension of land, and death and injury occurring on such dock to two longshoremen engaged in loading a vessel afloat in such navigable waters did not occur upon "navigable waters of the United States," within statute providing that longshoremen's and harbor workers' compensation shall be payable if disability or death results from injury occurring upon navigable waters of the United States. Longshoremen's and Harbor Workers' Compensation Act, § 3(a), 33 U.S.C.A. § 903(a).—*Johnson v. Traynor*, 243 F.Supp. 184, reversed Ma-

rine Stevedoring Corp. v. Oosting, 398 F.2d 900, certiorari granted *Nacirema Operating Co. v. Johnson*, 89 S.Ct. 444, 393 U.S. 976, 21 L.Ed.2d 437, reversed 90 S.Ct. 347, 396 U.S. 212, 24 L.Ed.2d 371, rehearing denied 90 S.Ct. 895, 397 U.S. 929, 25 L.Ed.2d 109, rehearing denied 90 S.Ct. 896, 397 U.S. 929, 25 L.Ed.2d 109.—Work Comp 93.

E.D.N.Y. 1988. Member of ship's "riding crew" who was injured while cleaning ship's cargo tank on the high seas was not injured on the "navigable waters of the United States" and thus his unseaworthiness claim against vessel owner was not barred by Longshore and Harbor Workers' Compensation Act. Longshore and Harbor Workers' Compensation Act § 3(a), as amended 33 U.S.C.A. § 903(a).—*Marroquin v. American Trading Transp. Co., Inc.*, 711 F.Supp. 1165.—Work Comp 2085.

S.D.N.Y. 1981. Words "United States" and the phrase "navigable waters of the United States," within Longshoremen's and Harbor Workers' Compensation Act's provision limiting coverage to injury occurring on navigable waters of United States, designate the waters as to which the United States rather than the individual states have jurisdiction. Longshoremen's and Harbor Workers' Compensation Act, §§ 2(9), 3(a) as amended 33 U.S.C.A. §§ 902(9), 903(a).—*Cove Tankers Corp. v. United Ship Repair, Inc.*, 528 F.Supp. 101, affirmed 683 F.2d 38.—Work Comp 262.

W.D.N.Y. 1950. Where plaintiff specifically alleged that building where accident to her husband occurred had a dock, which was adjoining a navigable stream on which was located a barge from which grain was being unloaded and transported into the building and that her husband was struck by a boom while he was on the barge, the accident happened upon "navigable waters of the United States" and the Longshoremen's Compensation Act was applicable. Longshoremen's and Harbor Workers' Compensation Act, §§ 3(a), 4(a), 5, 33 U.S.C.A., §§ 903(a), 904(a), 905.—*Wendelen v. Commander Larabee Mill. Co.*, 96 F.Supp. 92, affirmed 187 F.2d 732.—Work Comp 93.

E.D.Pa. 1980. Term "navigable waters of the United States," as used in Clean Water Act, does not require navigability in fact. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.—*U.S. v. Oxford Royal Mushroom Products, Inc.*, 487 F.Supp. 852.—*Environ Law* 173.

S.D.Tex. 2001. Personal injury action brought against vessel owner by member of riding crew who was injured in fall from crossbeam in vessel's double bottom was governed by Longshore and Harbor Workers' Compensation Act (LHWCA), given absence of evidence that injury occurred while vessel was within territorial reach of foreign nation and that action thus arose outside "navigable waters of the United States." Longshore and Harbor Workers' Compensation Act, § 3(a), 33 U.S.C.A. § 903(a).—*Pena v. Keystone Shipping Co.*, 142 F.Supp.2d 801.—Ship 84(3.2).

W.D.Va. 1938. Waters are "navigable waters of the United States" when they form in their ordinary

condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water. U.S.C.A. Const. art. 1, § 8, cl. 3.—*U.S. v. Appalachian Elec. Power Co.*, 23 F.Supp. 83, affirmed 107 F.2d 769, certiorari granted 60 S.Ct. 608, 309 U.S. 646, 84 L.Ed. 999, reversed 61 S.Ct. 291, 311 U.S. 377, 85 L.Ed. 243, rehearing denied 61 S.Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, petition denied 63 S.Ct. 67, 317 U.S. 594, 87 L.Ed. 487.—Nav Wat 1(3).

Ill.App.4 Dist. 1957. A body of water comes under the term "navigable waters of the United States" if it is used or is susceptible of being used in its ordinary condition, or with reasonable improvements, as a highway for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—*Senko v. La Crosse Dredging Corp.*, 147 N.E.2d 708, 16 Ill.App.2d 154.—Nav Wat 1(3).

Minn. 1890. The inland lakes lying wholly within the limits of a state are not "navigable waters of the United States," and suits to enforce a lien for supplies, etc., against boats and vessels thereon, are not within the admiralty jurisdiction of the District Courts of the United States.—*Stapp v. Clyde*, 45 N.W. 430, 43 Minn. 192.

N.Y.A.D. 3 Dept. 1941. A fireman on a steam lighter, which carried freight on Hudson River, and which was documented under laws of United States and was self-propelled, was a "member of a crew" of a vessel on "navigable waters of the United States", and was, therefore, excluded from operation of New York State Unemployment Insurance Law by virtue of federal legislation. Labor Law, § 500 et seq.—*In re Smith*, 31 N.Y.S.2d 232, 263 A.D. 757, appeal denied 32 N.Y.S.2d 108, 263 A.D. 774, appeal granted 39 N.E.2d 310, 287 N.Y. 855, reversed Claim of Cassaretakis, 44 N.E.2d 391, 289 N.Y. 119, motion denied 47 N.E.2d 438, 289 N.Y. 838, motion denied Claim of Bergen, 47 N.E.2d 439, 289 N.Y. 839, affirmed Standard Dredging Corporation v. Murphy, 63 S.Ct. 1067, 319 U.S. 306, 87 L.Ed. 1416, appeal dismissed Matton Steamboat Co. v. Murphy, 63 S.Ct. 1126, 319 U.S. 412, 87 L.Ed. 1483.—Commerce 82.20.

N.Y.A.D. 3 Dept. 1941. A cook aboard a vessel propelled by steam commissioned to carry petroleum products between Constable Hook, Bayonne and Rutherford, New Jersey, and who was privileged to sleep aboard the vessel but generally went home to sleep was a "member of the crew" of a vessel on "navigable waters of the United States," and was excluded from operation of New York State Unemployment Law in view of federal unemployment legislation whereby the federal government had exercised exclusive jurisdiction over that group. Labor Law, § 500 et seq., 26 U.S.C.A. § 1607(c)(4); U.S.C.A. Const. art. 3, § 2.—*In re Sheredos*, 31 N.Y.S.2d 230, 263 A.D. 756, appeal denied 32 N.Y.S.2d 373, 263 A.D. 774, appeal granted 39 N.E.2d 310, 287 N.Y. 855, reversed Claim of Cassaretakis, 44 N.E.2d 391, 289 N.Y. 119, motion denied 47 N.E.2d 438, 289 N.Y. 838, motion

denied Claim of Bergen, 47 N.E.2d 439, 289 N.Y. 839, affirmed Standard Dredging Corporation v. Murphy, 63 S.Ct. 1067, 319 U.S. 306, 87 L.Ed. 1416, appeal dismissed Matton Steamboat Co. v. Murphy, 63 S.Ct. 1126, 319 U.S. 412, 87 L.Ed. 1483.—Commerce 82.20.

N.Y.A.D. 3 Dept. 1941. An engineer on a tugboat, documented under the laws of United States and used in towing oil tankers and barges over Hudson river and Barge Canal between New York and Buffalo, was a "member of a crew" of a vessel on "navigable waters of the United States" exempt from State Unemployment Insurance Law, and not entitled to benefits thereunder. Labor Law, § 500 et seq.—In re Knowlson, 30 N.Y.S.2d 930, 263 A.D. 756, appeal denied 32 N.Y.S.2d 373, 263 A.D. 774, appeal granted 39 N.E.2d 309, 287 N.Y. 854, reversed Claim of Cassaretakis, 44 N.E.2d 391, 289 N.Y. 119, motion denied 47 N.E.2d 438, 289 N.Y. 838, motion denied Claim of Bergen, 47 N.E.2d 439, 289 N.Y. 839, affirmed Standard Dredging Corporation v. Murphy, 63 S.Ct. 1067, 319 U.S. 306, 87 L.Ed. 1416, appeal dismissed Matton Steamboat Co. v. Murphy, 63 S.Ct. 1126, 319 U.S. 412, 87 L.Ed. 1483.—Social S 366.

R.I. 1940. The term "navigable waters of the United States" has reference to commerce of a substantial and permanent character to be conducted thereon.—Asselin v. Blount, 14 A.2d 696, 65 R.I. 293, reargument denied 16 A.2d 328, 65 R.I. 443.

Vt. 1896. Rivers constitute "navigable waters of the United States," within the meaning of the acts of Congress, in contradistinction from the "navigable waters of the states," when they form in their ordinary condition, by themselves or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water. The Daniel Ball, 77 U.S. 557, 562, 10 Wall. 557, 562, 19 L.Ed. 999. If, however, they do not thus form such contiguous highways, but are navigable only between places in the same state, they are not navigable waters of the United States, but only of the state.—New England Trout & Salmon Club v. Mather, 35 A. 323, 68 Vt. 338, 33 L.R.A. 569.

NAVIGABLE WATERS OF UNITED STATES

C.C.A.4 (N.C.) 1933. To come within regulatory power of Congress as "navigable waters of United States," stream must be susceptible in natural condition of becoming highway of interstate or foreign commerce (Const. art. 1, § 8, subd. 3).—U.S. v. Doughton, 62 F.2d 936.—Nav Wat 1(3).

E.D.N.Y. 1952. Waters are "navigable waters of United States" when they form in their ordinary condition by themselves or by uniting with other waters a continued highway over which commerce with other states or foreign countries may be carried on in customary modes.—U.S. v. Cavalliotis, 105 F.Supp. 742.—Nav Wat 1(1).

N.Y.Supp. 1931. Term "navigable waters of United States" has reference to commerce of substantial and permanent character.—Van Cortlandt v. New

York Cent. R. Co., 250 N.Y.S. 298, 139 Misc. 892, reversed 263 N.Y.S. 842, 238 A.D. 132, reversed 192 N.E. 401, 265 N.Y. 249.—Nav Wat 1(3).

NAVIGABLE WATERWAY

App.D.C. 1941. A river is a "navigable waterway" of the United States when, by improvements with reasonable regard to cost and need, it may be made available for navigation in interstate commerce, even though such improvements have neither been made nor authorized.—Pennsylvania Water & Power Co. v. Federal Power Commission, 123 F.2d 155, 74 App.D.C. 351, certiorari denied 62 S.Ct. 640, 315 U.S. 806, 86 L.Ed. 1205.—Nav Wat 1(3).

App.D.C. 1936. Biscayne Bay, Fla., held a public "navigable waterway" of the United States, subject to powers of Congress (33 U.S.C.A. § 403; Const. art. 1, § 8, cl. 3; art. 3, § 2, cl. 1).—Miami Beach Jockey Club v. Dern, 83 F.2d 715, 65 App. D.C. 369, opinion supplemented 86 F.2d 135, 66 App.D.C. 254, certiorari denied 57 S.Ct. 17, 299 U.S. 556, 81 L.Ed. 409.—Nav Wat 1(6).

C.A.6 1996. Although river on which paper plant was located was navigable waterway, reservoir located under paper plant, and in which claimant was working as underwater diver when he suffered stroke attributable to that work, was not "navigable waterway" and thus did not fulfill LHWCA "situs" requirement; area which held water where injury occurred was intended primarily for storage of water for plant's heating and cooling system, and reservoir or tank at issue was tantamount to being land-locked, since no vessel could gain access to it due to walls surrounding it. Longshore and Harbor Workers' Compensation Act, § 3(a), 33 U.S.C.A. § 903(a).—Rizzi v. Underwater Const. Corp., 84 F.3d 199, 1996 Fed.App. 145P, certiorari denied 117 S.Ct. 302, 519 U.S. 931, 136 L.Ed.2d 220.—Work Comp 260.

C.A.6 1996. For purposes of LHWCA's "situs" test, "navigable waterway" ends where underground pipes and vents remove water from river to reservoir or tank for manufacturing or storage purposes, since river water pumped into municipal reservoirs and similar facilities would otherwise continue to be viewed as navigable waters even though transportation was no longer possible; rather, like drains and small creeks, such reservoirs are too far removed from navigation to be any longer considered "navigable waterways," even under liberal construction. Longshore and Harbor Workers' Compensation Act, § 3(a), 33 U.S.C.A. § 903(a).—Rizzi v. Underwater Const. Corp., 84 F.3d 199, 1996 Fed.App. 145P, certiorari denied 117 S.Ct. 302, 519 U.S. 931, 136 L.Ed.2d 220.—Work Comp 260.

C.A.5 (La.) 1992. Crooked Creek Reservoir in Louisiana, created for recreational and flood control by dam constructed between Crooked Creek and Bayou Nezbigue, was not "navigable waterway" and, therefore, there was no admiralty jurisdiction over complaint for exoneration from or limitation of liability arising out of incident that occurred when bass boat was being operated on reservoir.

28 U.S.C.A. § 1333(1); 46 App.U.S.C.A. § 181 et seq.; U.S.C.A. Const. Art. 3, § 2, cl. 2.—*Guillory v. Outboard Motor Corp.*, 956 F.2d 114, rehearing denied.—*Nav Wat 1(6); Ship 209(1.1).*

C.A.4 (Md.) 1993. Although the Potomac River was wholly within Maryland, it was not incapable of supporting the movement of commerce between Maryland and West Virginia, and thus was a “navigable waterway” for purposes of determining admiralty jurisdiction.—*Mullenix v. U.S.*, 984 F.2d 101.—*Nav Wat 1(6).*

C.C.A.5 (Tex.) 1929. “Navigable waterway” is one capable of affording highway for useful commerce. A “navigable waterway” is one that in its natural state is capable of affording a highway for useful commerce.—*Davis v. Gulf & I. Ry. Co. of Texas*, 31 F.2d 109.—*Nav Wat 1(3).*

C.C.A.5 (Tex.) 1929. “Navigable waterway” is one capable of affording highway for useful commerce.—*Davis v. Gulf & I. Ry. Co. of Texas*, 31 F.2d 109.—*Nav Wat 1(3).*

M.D.Fla. 1993. “Navigable waterway” of the United States is a waterway which is used, or is susceptible of being used, in its ordinary condition, as a highway for commerce, over which trade and travel are or may be conducted in customary modes of trade and travel on water.—*Lykes Bros. Inc. v. U.S. Army Corps of Engineers*, 821 F.Supp. 1457, affirmed 64 F.3d 630.—*Nav Wat 1(3).*

E.D.La. 1984. Cross-cut Canal which flows into Lake Pontchartrain is a “navigable waterway” for purposes of admiralty jurisdiction, notwithstanding fact that canal is wholly within Louisiana, since it is part of contiguous waterway which forms an interstate or foreign highway of water commerce and is presently being used commercially inasmuch as licensed commercial fishermen traverse canal to catch fish and crabs in surrounding waters and Lake Pontchartrain.—*Respass v. U.S.*, 586 F.Supp. 861.—*Adm 4.*

W.D.La. 1981. Lake Bistineau, Louisiana, was not a “navigable waterway” within contemplation of admiralty jurisdiction at time of boating accident, where, although lake was formerly a waterway, lake’s navigability was altered when dam was constructed over 40 years prior to accident, where, since dam was built, lake had been used exclusively for recreational, noncommercial activity and was not usable for commercial shipping, and where there was no reasonable likelihood that lake would be rendered susceptible of use for commercial shipping in the foreseeable future.—*Smith v. Hustler, Inc.*, 514 F.Supp. 1265.—*Nav Wat 1(6).*

D.Minn. 1996. Rainy River was “navigable in fact,” and, thus, was “navigable waterway” for purposes of district court’s admiralty jurisdiction; river was international waterway frequently used for travel between United States and Canada, river was used, by numerous area resorts and fishing guides, for transport of customers and guests to Lake of the Woods, which also served as international water boundary between United States and Canada, and sea plane base was located on river. 46 App.

U.S.C.A. § 183(a).—*Moeller v. Mulvey*, 959 F.Supp. 1102.—*Adm 4; Nav Wat 1(6).*

D.Minn. 1996. For purposes of maritime jurisdiction, “navigable waterway” is that which is used, or is susceptible of being used, in its ordinary condition, as highway for commerce, over which trade and travel are or may be conducted in customary modes of trade and travel on water.—*Moeller v. Mulvey*, 959 F.Supp. 1102.—*Adm 4.*

M.D.Tenn. 2000. Lake located entirely within state was not “navigable waterway,” even if it was formed by damming river that had historically been considered navigable, and thus federal court could not exercise admiralty jurisdiction over action to recover damages for injuries suffered on boat in lake. 28 U.S.C.A. § 1333(1).—*Casciani v. Pruett*, 109 F.Supp.2d 894.—*Adm 4.*

M.D.Tenn. 1997. Center Hill Lake, which is located entirely within the State of Tennessee, and which does not support commercial traffic or fishing, does not constitute a “navigable waterway” as defined by federal admiralty statutes and caselaw.—*Matter of Fields*, 967 F.Supp. 969.—*Nav Wat 1(6).*

W.D.Wash. 1970. A waterway is a “navigable waterway” only if it is suitable for use as a highway for commerce, and a waterway meets this requirement if it presently is being used or is suitable for use, or if it has been used or was suitable for use in the past, or if it could be made, suitable for use in the future by reasonable improvements.—*Pitship Duck Club v. Town of Sequim*, 315 F.Supp. 309.—*Nav Wat 1(3).*

La.App. 1 Cir. 1971. Although canal which defendant desired to fill was an artificial body of water, it was a “navigable waterway”, where the canal had been put to various navigational uses for several years, including renting of dock space by defendant for crew boats.—*Discon v. Saray, Inc.*, 255 So.2d 489, writ issued 257 So.2d 148, 260 La. 681, reversed 265 So.2d 765, 262 La. 997.—*Nav Wat 1(3).*

La.App. 4 Cir. 1997. Marshy area in which boaters were traveling when their flatbottom skiff hit concrete survey marker in marshy area while they were returning from fishing expedition was not “navigable waterway” for purposes of federal statute barring unauthorized obstruction of such waterways, and thus, federal statute could not provide basis for recovery by boaters in action against owner of area, which was otherwise barred by recreational use immunity statute; depth of marsh ranged from six to 24 inches, and marsh ended in dead-end and was not part of avenue of commerce. 33 U.S.C.A. § 403; LSA-R.S. 9:2791.—*Verdin v. Louisiana Land and Exploration Co.*, 693 So.2d 162, 1996-1815 (La.App. 4 Cir. 3/12/97), rehearing denied, writ denied 701 So.2d 994, 1997-1581 (La. 9/26/97), writ denied 701 So.2d 994, 1997-1598 (La. 9/26/97).—*Nav Wat 1(6), 19.*

N.Y.Supp. 1931. Waterway is “navigable waterway” only when susceptible of being used in its natural condition as highway for commerce.—*Van Cortlandt v. New York Cent. R. Co.*, 250 N.Y.S.

298, 139 Misc. 892, reversed 263 N.Y.S. 842, 238 A.D. 132, reversed 192 N.E. 401, 265 N.Y. 249.—Nav Wat 1(3).

Wis.App. 1994. "Navigable waterway," over which Department of Natural Resources has jurisdiction, requires only that commercial or recreational use of waterway is possible; actual use need not be shown. W.S.A. 30.195.—City of Oak Creek v. State Dept. of Natural Resources, 518 N.W.2d 276, 185 Wis.2d 424.—Nav Wat 1(3).

NAVIGABLE WATERWAY OF UNITED STATES

C.A.D.C. 1985. River is "navigable waterway of United States" if it constitutes continuous highway capable of use for purposes of transportation and commerce with other states or foreign countries in customary modes in which such commerce is conducted by water or which may be made available for navigation given reasonable improvements.—Washington Water Power Co. v. F.E.R.C., 775 F.2d 305, 249 U.S.App.D.C. 255.—Nav Wat 1(3).

NAVIGABLE WATERWAYS

Ala. 1998. Creek and artificial lake created by dam were not "navigable waterways," even though creek flowed through lands belonging to more than one person and was occasionally used by fishing boats and canoes during some parts of year; proof of occasional use by boats and canoes did not show that creek was capable of any beneficial public use. Code 1975, § 9-11-80(a, b).—Wehby v. Turpin, 710 So.2d 1243.—Nav Wat 1(6).

La.App. 3 Cir. 1975. "Navigable waterways" are highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.—Southern Natural Gas Co. v. Gulf Oil Corp., 320 So.2d 917, certiorari denied 324 So.2d 812.—Nav Wat 1(3).

NAVIGATE

C.C.A.9 (Cal.) 1943. "Navigate" is defined as to journey by water; to go in a vessel; to sail or manage a vessel; to use the waters as a highway for commerce or communication; ply. Hence, to direct one's course through any medium; to steer, especially to operate an airplane or airship.—U.S. v. Monstad, 134 F.2d 986.

NAVIGATING

C.A.5 (La.) 1981. Tug, which was holding its position and that of its barge against river bank through use of engines against the current, was "navigating" for purposes of the Vessel Bridge-to-Bridge Radiotelephone Act requirement of a listening watch for a towing vessel while navigating; congressional intent under the Act was to cover all vessels whose operation might affect or impede navigation in navigable waters; a vessel which is "underway" for purposes of the Inland Rules must obey the Act. Vessel Bridge-to-Bridge Radiotelephone Act, § 4, 33 U.S.C.A. § 1203.—Allied Chemical Corp. v. Hess Tankship Co. of Delaware, 661 F.2d 1044.—Collision 90.

E.D.La. 1985. Had moored vessel been holding her position and that of her tow through the use of engines against the current, she would have been "navigating" for purposes of the Vessel Bridge-to-Bridge Radiotelephone Act [33 U.S.C.A. § 1203] requirement of a listening watch for a towing vessel while navigating but, because her engines were turned off, she was not underway and the Act was not applicable. Vessel Bridge-to-Bridge Radiotelephone Act, § 4, 33 U.S.C.A. § 1203.—Williamson Leasing Co., Inc. v. American Commercial Lines, Inc., 616 F.Supp. 1330.—Collision 70.

S.D.N.Y. 1936. Situation presented by vessel coming out of a slip and maneuvering to get on her course is not "navigating" on any course, and steering and sailing rules do not apply.—The Rochester, 18 F.Supp. 51, affirmed 87 F.2d 998.—Collision 96.

NAVIGATION

C.A.1 (Mass.) 1973. Movement of raft while being hauled under pier in connection with its use as a work platform and while attached by a line to the pier did not constitute "navigation" such that the raft could be considered to have temporarily acquired the status of a "vessel" and thus did not warrant maintenance of action under the Jones Act or general maritime law by contractor's employee who was injured while aboard the raft, about to move it, in the course of repair work on pilings. Jones Act, 46 U.S.C.A. § 688.—Powers v. Bethlehem Steel Corp., 477 F.2d 643, rehearing denied 483 F.2d 963, certiorari denied 94 S.Ct. 160, 414 U.S. 856, 38 L.Ed.2d 106.—Seamen 29(2); Ship 80.

C.A.3 (Pa.) 1955. Where car float, on which railroad brakeman was injured, was being loaded with box cars at dock in preparation for river travel, the car float was in "navigation" for purpose of applying the Jones Act. Jones Act, 46 U.S.C.A. § 688.—Zientek v. Reading Co., 220 F.2d 183, certiorari denied 76 S.Ct. 55, 350 U.S. 846, 100 L.Ed. 754, rehearing denied 76 S.Ct. 345, 350 U.S. 960, 100 L.Ed. 834.—Work Comp 262.

C.A.4 (W.Va.) 1976. Mere fact that vessel is moored to a wharf or structure does not mean that it is not in "navigation" for purposes of applicability of the Jones Act. Jones Act, 46 U.S.C.A. § 688.—Whittington v. Sewer Const. Co., Inc., 541 F.2d 427.—Seamen 29(2).

C.C.A.1 (Mass.) 1941. In determining whether one is a "member of a crew" so that Longshoremen's Act is inapplicable to him, the ship is not in "navigation" if there is no present hope or intention of having her go to sea, and if it would take a long time to put her in shape for an ocean voyage, or if she has been laid up for the winter, but a ship is in navigation when she returns from her voyage and is taken to drydock to undergo repairs preparatory to making another trip, and ship is in navigation, although docked, if she remains in readiness for another voyage, even though she is not under contract. Longshoremen's and Harbor Workers' Compensation Act §§ 3(a), 5, 33 U.S.C.A. §§ 903(a), 905.—Carumbo v. Cape Cod S. S. Co., 123 F.2d 991.—Work Comp 262.

S.D.Ill. 1941. Where employee sustained injury while he was working on an immovable barge located on Illinois side of Mississippi River, in connection with construction of lock and dam across the river, the work being performed by the employer and employee did not bear a direct relation to "navigation" and "commerce" so as to render injuries sustained compensable under the longshoremen's act. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. § 901 et seq.—Central Engineering Co. v. Bassett, 42 F.Supp. 750.—Work Comp 124.

E.D.Mich. 1957. For purposes of Great Lakes admiralty statute entitling parties to jury trial in actions concerning vessels employed in commerce and "navigation", a ship was no longer in "navigation" when it was laid up for the winter and used solely as a floating warehouse, and one who was injured in unloading it after it had been moved by tugs, but without navigating crew, from one dock to another, in order to unload her cargo, was not entitled to jury trial. 28 U.S.C.A. § 1873.—Kroliczyk v. Waterways Nav. Co., 151 F.Supp. 873.—Adm 80.

E.D.Pa. 1951. "Crew members" within the Jones Act are those persons who are on board a vessel naturally and primarily to aid in "navigation", which is not limited to putting over the helm, but embraces duties essential for the purposes of the vessel, nor is the term "members of the crew" confined to those who can hand, reef and steer, and every one is entitled to the privilege of a seaman who at all times contributes to the labor about the operation and welfare of a ship when she is upon a voyage. Jones Act, 46 U.S.C.A. § 688.—Early v. American Dredging Co., 101 F.Supp. 393.—Seamen 2.

S.D.Tex. 1928. Collision in narrow channel held due to fault of ship failing to maintain proper steerageway; "navigation." Collision in narrow channel held due to fault of ship failing to maintain proper steerageway by reason of reducing speed; "navigation" meaning management requiring the exercise of judgment to use proper speed under changing circumstances.—The Ada O., 27 F.2d 906.—Collision 91.

E.D.Va. 1959. Dead and deactivated vessel, which was owned by the United States, and which was being used by the United States for surplus grain storage, was not in "navigation" during grain unloading operations, and shipowner's warranty of seaworthiness was not required to be extended to longshoreman, who was lawfully aboard vessel during grain unloading operations, and who was injured because of defective condition of marine leg used in unloading operations, and the United States was not liable for longshoreman's injuries.—Roper v. U. S., 170 F.Supp. 763, affirmed 282 F.2d 413, certiorari granted 81 S.Ct. 466, 365 U.S. 802, 5 L.Ed.2d 459, affirmed 82 S.Ct. 5, 368 U.S. 20, 7 L.Ed.2d 1.—Ship 84(3.2).

E.D.Va. 1955. In action for damages to libellant's oyster planting grounds by craft of United States investigating an aircraft accident in navigable

waters, government was not relieved of liability because of the paramount right of navigation since dragging operations do not constitute "navigation" in the sense of granting a paramount right. 28 U.S.C.A. §§ 1346(b), 2680(d).—Carr v. U.S., 136 F.Supp. 527.—Fish 7(3).

Cal.App. 2 Dist. 2002. A vessel is in "navigation," for purposes of determining whether an employee is a "seaman" under the Jones Act, if it is engaged as an instrument of commerce and transportation on navigable waters. Jones Act, 46 App. U.S.C.A. § 688.—Spears v. Kajima Engineering & Construction, Inc., 124 Cal.Rptr.2d 97, 101 Cal. App.4th 466, review denied, summarized in 2002 WL 31133212.—Seamen 2.

Cal.App. 2 Dist. 2002. Derrick barge that was anchored to the harbor bottom and secured by a headline to shore at all times during pile driving project in which employee was involved and when employee's accident occurred was not a vessel in "navigation" at the time employee was working on it, and thus employee was not a "seaman" entitled to recover for injuries under Jones Act, where only movement of the barge that employee experienced was when barge was fleeting on its anchor wires, and injury caused by movement of crane did not occur when barge was moving. Jones Act, 46 App.U.S.C.A. § 688.—Spears v. Kajima Engineering & Construction, Inc., 124 Cal.Rptr.2d 97, 101 Cal.App.4th 466, review denied, summarized in 2002 WL 31133212.—Seamen 2.

Ill.App. 4 Dist. 1996. Public right of "navigation" did not encompass barge owner's practice of loading barges in such manner that caused them to extend in front of neighboring property of riparian owner; during loading operation, barge was removed from stream of traffic, and barge owner went beyond right of navigation and used area in front of neighbor's property as part of private enterprise.—Gibbons v. Clarkson Grain Co., 217 Ill. Dec. 333, 667 N.E.2d 126, 281 Ill.App.3d 529, appeal denied 219 Ill.Dec. 563, 671 N.E.2d 730, 168 Ill.2d 589.—Nav Wat 16, 39(2).

Iowa 1932. In suit by littoral owner to restrain state from constructing dock on shore of lake, evidence showed proposed structure was intended in good faith and suitable as aid to "navigation," which comprises transportation of persons and commodities between ports.—Peck v. Alfred Olsen Const. Co., 245 N.W. 131, 216 Iowa 519, 89 A.L.R. 1147.—Nav Wat 43(4).

Ky. 1936. Use of a stream by boat a few times in many years for picnic or excursion cannot be deemed "navigation."—Natcher v. City of Bowling Green, 95 S.W.2d 255, 264 Ky. 584.

Mass. 1913. Act May 28, 1908, c. 212, § 10, 35 Stat. 428, 46 U.S.C.A. § 395, requires local steamboat inspectors to inspect the hull and equipment of seagoing barges, and to satisfy themselves that they are of a structure suitable for the service in which they are employed, have suitable accommodations for the crew, and are in a condition to warrant the belief that they may be used in navigation with safety to life. Section 11 requires barges to

be equipped with at least one lifeboat, one anchor with chain and cable, and one life preserver for each person on board. Held, that the "equipment" required to be inspected is not limited to the matter specified in section 11, but includes a steam boiler used only for loading and unloading and weighing anchor, since the inspectors are required to certify that the barge may be used in navigation with safety, and "navigation" may include a vessel at anchor or at dock, under some circumstances, as well as in motion.—*Commonwealth v. Breakwater Co.*, 100 N.E. 1034, 214 Mass. 10.

N.Y.A.D. 2 Dept. 1904. "Navigation" is defined by Bouvier as whatever relates to traversing the sea in ships; the art of ascertaining the geographical position of a ship and directing its course. The construction of a dock, while it may be useful to individuals engaged in navigation, is not involved in the public right of navigation as understood by the law.—*Trustees, etc., of Town of Brookhaven v. Smith*, 90 N.Y.S. 646, 98 A.D. 212, reversed 80 N.E. 665, 188 N.Y. 74, 9 L.R.A.N.S. 326, 11 Am. Ann. Cas. 1.

N.Y.A.D. 3 Dept. 1923. A corporation organized under Laws 1848, c. 40, for towing and propelling canal boats, vessels, rafts, or floats on the canals and navigable rivers of the state, and not organized under any of the statutes now superseded by the Transportation Corporations Law, its business being that of towing vessels on the Hudson river and arms of the sea, held engaged in "navigation" and "transportation," within the meaning of Tax Law, § 184, providing for an additional franchise tax on transportation companies, and therefore subject to the additional franchise tax.—*Newtown Creek Towing Co. v. Law*, 199 N.Y.S. 866, 205 A.D. 209, affirmed 143 N.E. 749, 237 N.Y. 578.—Tax 117.

N.Y.Sup. 1931. Commerce comprehends or includes "navigation" which is subordinate to commerce.—*Van Cortlandt v. New York Cent. R. Co.*, 250 N.Y.S. 298, 139 Misc. 892, reversed 263 N.Y.S. 842, 238 A.D. 132, reversed 192 N.E. 401, 265 N.Y. 249.

N.Y.Ct.Cl. 1947. Provision of Canal Law that no recovery from state shall be had for damages resulting from "navigation" of canals, precluded recovery for damage to yacht onto which a slab of concrete fell from wall of canal, though yacht was motionless at the time. Canal Law, § 120; Court of Claims Act, § 8.—*Glens Falls Ins. Co. v. State*, 69 N.Y.S.2d 51, 188 Misc. 684.—Canals 29.

N.Y.Ct.Cl. 1938. Injuries sustained by claimant while on barge when struck by lift bridge extending over Erie Canal while barge was proceeding on canal under the bridge resulted from "navigation" of the canal, and therefore no recovery for injuries could be had against state. Canal Law, § 47.—*Condon v. State*, 8 N.Y.S.2d 544, 169 Misc. 666.—Canals 29.

Ohio 1897. Clearly the term "easement of navigation" should not be construed in any narrow scientific sense, but, having in mind that the reservation of the easement of navigation by a state in a

navigable river is for the benefit of the public in its use of the highway, it should receive a construction in harmony with the nature of the uses of the water by the public, and the objects of a public good to be accomplished by such uses. Those objects relate to trade and commerce, which is the interchange of goods or products between nations or individuals by means of transportation, or, as applied to commerce on the water, by means of navigation. One dictionary meaning of "navigation" is "the science or art of conducting a ship from one place to another." Another definition is "the science or art of ascertaining the position and directing the course of vessels especially at sea, by astronomical observations or calculations; nautical science or art." And still another definition is "shipping," which would embrace conduct of ships generally. Commerce, then, is the object; navigation, the instrument or incident. In other words, navigation is the means by which commerce is accomplished, and it is for the purpose of aiding commerce that navigation is encouraged and protected. When the term "easement of navigation" is used, therefore, it carries with it the idea of navigation for the purpose of commerce, so that whatever relates to commerce or is incident to it is embraced in the term.—*Pollock v. Cleveland Ship Bldg. Co.*, 47 N.E. 582, 56 Ohio St. 655, 38 W.L.B. 117.

Ohio Mun. 1995. Although portion of dike extending beyond harbor line up to artificially created island exceeded lease granted by state to city, control over that portion of dike, for purposes of navigation and water commerce, was statutorily delegated to city and, moreover, regulation of hunting was regulation in furtherance of aid of "navigation" and "water commerce," such that city was authorized to enforce municipal code section prohibiting hunting within city limits where hunting took place on portion of dike extending beyond harbor line. R.C. §§ 721.04, 1506.10; Toledo, Ohio, Municipal Code § 505.01.—*Toledo v. Kilburn*, 654 N.E.2d 202, 71 Ohio Misc.2d 40.—Nav Wat 2, 29.

Or. 1928. Operation of ferryboat propelled by steam on navigable stream is "navigation," and regulated by federal statute.—*Kaminsky v. Good*, 265 P. 786, 124 Or. 618.—Ferries 29.

Wis. 1929. Boating for pleasure is considered "navigation," as well as boating for pecuniary profit.—*Nekoosa Edwards Paper Co. v. Railroad Commission*, 228 N.W. 144, 201 Wis. 40, rehearing denied 229 N.W. 631, 201 Wis. 40, affirmed 51 S.Ct. 352, 283 U.S. 787, 75 L.Ed. 1415.—Nav Wat 16.

NAVIGATIONAL AIDS

C.A.3 (Pa.) 1957. Clearance of air space above private land at end of airport runway, was included within term "navigational aids", as used in act authorizing Secretary of Air Force to develop airport by preparation of "navigational aids," and act authorized acquisition of clearance easement. Act July 27, 1954, §§ 101 et seq., 301, 501(a), 68 Stat. 535, 543, 548, 560.—U.S. v. 64.88 Acres of Land, More or Less, Situate in Allegheny County, Pa., 244 F.2d 534.—Em Dom 18.

NAVIGATIONAL SERVITUDE

U.S.Hawai'i 1979. "Navigational servitude" is an expression of notion that determination whether a taking has occurred must take into consideration important public interest in flow of interstate waters that in their natural condition are in fact capable of supporting navigation. U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 5.—Kaiser Aetna v. U. S., 100 S.Ct. 383, 444 U.S. 164, 62 L.Ed.2d 332.—Nav Wat 16.

C.A.Fed. 2000. The "navigational servitude" derives from the commerce clause of the constitution, and gives the United States Government a "dominant servitude"—a power to regulate and control the waters of the United States in the interest of commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.—Palm Beach Isles Associates v. U.S., 208 F.3d 1374, affirmed on rehearing 231 F.3d 1354, rehearing en banc denied 231 F.3d 1365.—Nav Wat 2.

C.A.Fed. 1992. "Navigational servitude" extends to lands beneath and within stream's ordinary high water mark and inside bed of navigable water.—Confederated Tribes of Colville Reservation v. U.S., 964 F.2d 1102, opinion corrected, and rehearing denied.—Nav Wat 36(1), 36(3).

C.A.5 (La.) 1993. "Navigational servitude" is right of public to use navigable waterways as continuous highways for purpose of navigation in interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.—Dardar v. Lafourche Realty Co., Inc., 985 F.2d 824, on remand 1994 WL 374309, affirmed 55 F.3d 1082.—Nav Wat 16.

C.A.5 (La.) 1988. "Navigational servitude" is dominant servitude which extends to all lands below the ordinary high water mark of a navigable river.—Lambert Gravel Co., Inc. v. J.A. Jones Const. Co., 835 F.2d 1105, certiorari denied 108 S.Ct. 2903, 487 U.S. 1236, 101 L.Ed.2d 936.—Nav Wat 2.

C.A.5 (La.) 1981. "Navigational servitude" represents the Government's dominant right over navigable waters for the purposes of improving and regulating navigation.—U.S. v. 119.67 Acres of Land, More or Less, Situated in Plaquemines Parish, State of La., 663 F.2d 1328.—Nav Wat 16.

C.A.10 (Okla.) 1986. "Navigational servitude" describes the superior interest of the United States in navigation in the nation's navigable waters; the servitude derives from the Commerce Clause and is a concept of power, not of property and expresses the notion that the right of the public to use a waterway supersedes any claim of private ownership. U.S.C.A. Const. Art. 1, § 8 cl. 3.—Cherokee Nation of Oklahoma v. U.S., 782 F.2d 871, certiorari granted 107 S.Ct. 59, 479 U.S. 811, 93 L.Ed.2d 18, reversed 107 S.Ct. 1487, 480 U.S. 700, 94 L.Ed.2d 704, appeal after remand 937 F.2d 1539, rehearing denied 948 F.2d 635, certiorari denied 112 S.Ct. 1939, 504 U.S. 910, 118 L.Ed.2d 545.—Commerce 82.30; Nav Wat 16.

C.A.3 (Pa.) 1996. Although the Fifth Amendment requires payment of just compensation for private property taken for public use, the United States is not constitutionally required to pay for

economic losses resulting from the exercise of its "navigational servitude," which is its power to regulate use of navigable waterways, because navigable waterways have always been under exclusive control of the federal government under the commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3; Amend. 5.—U.S. v. 30.54 Acres of Land, More or Less, Situated in Greene County, Com. of Pa., 90 F.3d 790.—Em Dom 2(10).

C.A.5 (Tex.) 1993. "Navigational servitude" is aspect of sovereignty of United States, grounded in power of federal government to regulate commerce, entitling government to exert dominant servitude in all lands below ordinary high water mark of navigable streams. 33 U.S.C.A. § 403.—United Texas Transmission Co. v. U.S. Army Corps of Engineers, 7 F.3d 436, certiorari denied 114 S.Ct. 2738, 512 U.S. 1235, 129 L.Ed.2d 859.—Nav Wat 2, 36(3).

D.Me. 1993. Term "navigational servitude" expresses notion that public's right of navigation supersedes any claim of private ownership; that servitude is the privilege to appropriate without compensation which attaches to exercise of the power of government to control and regulate navigable waters in the interest of commerce and is a dominant one which can be asserted to the exclusion of any competing or conflicting one.—Donnell v. U.S., 834 F.Supp. 19.—Em Dom 2(10); Nav Wat 16.

Alaska 1995. "Navigational servitude" is dominant servitude, sometimes described as superior navigation easement, which allows federal government to exercise its regulatory power over navigable waters in interests of commerce without compensation for interference with private water rights; it is dominant right over navigable waters for purposes of improving and regulating navigation and is derived from commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3; Submerged Lands Act, § 6(a), 43 U.S.C.A. § 1314(a).—Totemoff v. State, 905 P.2d 954, rehearing denied, certiorari denied 116 S.Ct. 2499, 517 U.S. 1244, 135 L.Ed.2d 190.—Commerce 82.30; Nav Wat 2.

Alaska 1973. Constitutional power of federal government to regulate navigable waters has given rise to a limitation on riparian rights known as federal "navigational servitude," under which riparian rights are held at all times subordinate to such use of submerged lands and of water flowing over them as may be consistent with or demanded by public rights of navigation. U.S.C.A. Const. art. 1, § 8.—Wernberg v. State, 516 P.2d 1191, rehearing denied 519 P.2d 801.—Nav Wat 39(2).

NAVIGATIONAL VISIBILITY

C.C.A.9 (Cal.) 1937. In determining naval cruiser's contributive fault in collision with merchant vessel while steaming between rolling banks of fog, it was essential to determine cruiser's "navigational visibility," which means visibility as affecting speed with reference to distance within which she could be brought to stop in water, before any course of any vessel emerging from fog on either side would cross her projected course alongside the fog bank at

its nearest point.—The Silver Palm, 94 F.2d 754, certiorari denied U.S. & the Chicago v. Silver Line, 58 S.Ct. 1046, 304 U.S. 576, 82 L.Ed. 1539.—Collision 82(2), 100(2).

NAVIGATION AND COMMERCE

N.J.Dept.of Labor 1947. Where decedent, who was employed with others by an amusement enterprise operator to furnish a water circus act staged at a pier for the entertainment of all persons who paid the admission price, fell overboard into the Atlantic Ocean while operating a motorboat in connection with such act and sustained fatal injuries, death was compensable under the state Workmen's Compensation Act and not under Federal statutes, since work of decedent had only incidental relation to "navigation and commerce".—Jones v. A.C. Steel Pier Co., 52 A.2d 48, 25 N.J.Misc. 176.—Work Comp 93.

NAVIGATION AND MANAGEMENT OF THE VESSEL

C.A.5 (La.) 1958. Master's action in equalizing trim of barge was an act in "navigation and management of the vessel" and therefore excusable under Harter Act, as affecting liability for damages to cargo. Harter Act, § 3, 46 U.S.C.A. § 192.—Commerce Oil Corp. v. Dixie Carriers, Inc., 252 F.2d 386.—Ship 137.

NAVIGATION AND VESSEL-INSPECTION LAWS

D.D.C. 1988. The phrase "navigation and vessel-inspection laws" included vessel manning laws for purposes of determining whether the Coast Guard could waive enforcement of vessel manning requirements as to United States citizenship. 46 U.S.C.A. § 8103.—National Marine Engineers' Beneficial Ass'n, AFL-CIO v. Burnley, 684 F.Supp. 6.—Ship 13.

NAVIGATION COMPANIES

Ga. 1921. A corporation chartered under the "general incorporation law" of the state of Delaware, having its capital stock paid in for the purpose of carrying on the corporate business, and having power under its charter to engage in the business of navigation and other industrial enterprises in the state of Georgia, which establishes a branch office and agency in this state and acquires property having a situs in this state for the purposes of taxation, is a navigation company within section 8 of the general tax act passed by the General Assembly of Georgia in the year 1918 (Acts 1918, p. 76), requiring "navigation companies," among others, to make returns of their property for taxation to the comptroller general of the state.—Southland S.S. Co. of Delaware v. Dixon, 106 S.E. 111, 151 Ga. 216.

NAVIGATION MAY BE IMPEDED OR OBSTRUCTED

E.D.Ky. 1973. For purposes of statute making it unlawful to deposit material on bank of any navigable water where same will be liable to be washed

into navigable water whereby "navigation may be impeded or obstructed," it is not necessary that discharge of solid particulate matter be permitted to go unchallenged until a major obstruction is created; any obstruction which tends to destroy the navigable capacity of one of navigable waters of the United States is within prohibition. Rivers and Harbors Appropriation Act of 1899, § 13, 33 U.S.C.A. § 407.—U.S. v. Kentland-Elkhorn Coal Corp., 353 F.Supp. 451.—Nav Wat 25.

NAVIGATION OF THE CANALS

N.Y. 1887. "Navigation of the canals," as used in Act 1870, providing that claims may be filed against the state for damages from canals, from their use and management, or arising from the neglect of an officer in charge, or from any accident or other matter connected therewith, and providing that the provisions of the act should not extend to claims arising from damages arising from the "navigation of the canals," means "the passage of boats along and upon the waters of the canal." "Damages might result from the careless management of locks, or their imperfect maintenance or construction, and the teams drawing the boats, or those in charge of them, from collisions due to overcrowding or insufficient room, sudden breaks chargeable upon unskillful or careless construction; and these are embraced within the term 'navigation of the canals,' but it can have no just application to accidents or injuries befalling one not at the time engaged in navigation of the canals, and which did not result from that navigation. Where one for a time had abandoned his canal boat, leaving it to be navigated by another, intending to resume its navigation, and was walking along the bank with that view, and was injured from a defect in the construction of an approach to the canal, he was not engaged in the 'navigation of the canals,' and could not be until he reached and rejoined his boat."—Rexford v. State, 11 N.E. 514, 105 N.Y. 229.

NAVIGATION OR MANAGEMENT OF THE VESSEL

C.A.9 (Wash.) 1966. The phrase "navigation or management of the vessel" when used in marine policy must be given the same construction as is given under the Harter Act and Carriage of Goods by Sea Act, and hence marine open cargo policy containing such clause did not cover loss of cargo due to alleged negligence of crew of the carrier in care and refrigeration of the cargo. Harter Act, § 3, 46 U.S.C.A. § 192; Carriage of Goods by Sea Act, § 4(2) (a), 46 U.S.C.A. § 1304(2) (a).—Larsen v. Insurance Co. of North America, 362 F.2d 261.—Insurance 2231.

NAVIGATION SERVITUDE

N.D.Cal. 1943. Title to the banks and bed of a navigable stream are subject to the "navigation servitude," which is the public right of navigation for the use of the people at large.—U.S. v. 412.715 Acres of Land, Contra Costa Country, Cal, 53 F.Supp. 143.—Nav Wat 16.

N.D.Cal. 1943. In proceedings to acquire land for construction of a naval fuel supply depot, where the government was in exclusive possession of the land and intended to continue in possession, it could not dismiss as of right its action as against land lying below mean high water line on ground that land sought to be excluded was already subject to a "navigation servitude", since its power to improve navigation did not include power to take property for the exclusive use of the Navy and exclude the public therefrom without paying just compensation to the owners. Acts April 28, 1942, 56 Stat. 226, 248; Second War Powers Act 1942, § 201, 50 U.S.C.A. Appendix § 632 amending Act July 2, 1917, 50 U.S.C.A. § 171.—U.S. v. 412.715 Acres of Land, Contra Costa Country, Cal, 53 F.Supp. 143.—Em Dom 246(2).

NAZERI TEST

Mo.App. E.D. 1996. "Nazeri test" in defamation cases consists of two standards which, while not absolutely consistent, should be read together: (1) words must be stripped of any pleaded innuendo and construed in their most innocent sense, and (2) alleged defamatory words must be considered in context, giving them their plain and ordinarily understood meaning, and words are to be taken in sense that is most obvious and natural and according to ideas they are calculated to convey to those to whom they are addressed.—Bauer v. Ribaud, 926 S.W.2d 38, rehearing, transfer denied, and transfer denied, appeal after remand 975 S.W.2d 180, rehearing, transfer denied, and opinion adopted and reinstated after retransfer.—Libel 19.

N.C.M

Tex.Civ.App.—Dallas 1939. The group of letters "N.C.M." has no legal significance and no meaning of which the court should take judicial notice, notwithstanding apparent intent to describe a person as "non compos mentis" by use of such letters.—Redmon v. Leach, 130 S.W.2d 873, writ dismissed, correct.—Evid 16.

(NCP)

C.A.11 (Ala.) 1996. "National contingency plan" ("NCP") is body of regulations governing cleanup of hazardous waste sites under CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 105(a), 42 U.S.C.A. § 9605(a).—Redwing Carriers, Inc. v. Saraland Apartments, 94 F.3d 1489, 140 A.L.R. Fed. 691.—Environ Law 439.

N.D

Cal. 1943. The use of the suffix "N.D." meaning Doctor of Naturopathy by one licensed as drugless practitioner and licensed to practice chiropractic, but not licensed to practice naturopathy constituted "unprofessional conduct" authorizing revocation of license. Chiropractic Act, St.1923, p. xx (See Gen. Laws, Act 4811); St.1939, p. 1682, § 2409; St.1937, p. 1276, § 2395.—Dare v. Board of Medical Examiners, 136 P.2d 304, 21 Cal.2d 790.—Health 209.

NEAP TIDES

U.S.Cal. 1935. When the moon is in its first and third quarters, the tides do not rise as high, nor fall as low, as on the average; at such times the tides are known as "neap tides."—Borax Consolidated v. City of Los Angeles, 56 S.Ct. 23, 296 U.S. 10, 80 L.Ed. 9, rehearing denied 56 S.Ct. 304, 296 U.S. 664, 80 L.Ed. 473.—Nav Wat 36(3).

Cal. 1915. When a state is formed of territory originally owned or subsequently acquired by the United States, such state, by virtue of its sovereignty, and in trust for the public uses of navigation and fishery, becomes the owner of all lands within its borders covered by navigable waters as well as that within a bay or harbor and permanently covered by its water, and the adjoining "tidelands," which are those below the line of "ordinary high tide," that is, the usual or ordinary high-water mark, the limit reached by the "neap tides," those tides which happen between the full and change of the moon twice in every 24 hours; but the land between ordinary high-water mark and the limit of unusual or extraordinary tides remains in the United States as a part of the uplands.—F.A. Hihn Co. v. City of Santa Cruz, 150 P. 62, 170 Cal. 436.

Cal. 1861. The "neap tides" are those tides which happen between the full and change of the moon twice in every 24 hours.—Teschemacher v. Thompson, 18 Cal. 11, 79 Am.Dec. 151.

Cal.App. 1 Dist. 1966. In determining height of ordinary high water California rule uses the average of all high "neap tides" which are those occurring when moon is in its first and third quarters, and the high neap tides are somewhat lower than the high spring tides occurring at times of new moon and full moon.—People v. William Kent Estate Co., 51 Cal.Rptr. 215, 242 Cal.App.2d 156.—Nav Wat 39(2).

Fla. 1940. When moon is in its first and third quarters, tidal forces of moon and sun are opposed and tides do not rise so high nor fall so low, and at such time tides are called "neap tides."—Miller v. Bay-To-Gulf, 193 So. 425, 141 Fla. 452.

NEAR

U.S.Mo. 1883. The word "near" is relative in its signification, and, as used in a statute authorizing townships to subscribe for the capital stock of any railroad company building or proposing to build a railroad into, through, or "near" such county, may apply to a railroad nine miles distant from the town.—Kirkbride v. Lafayette County, 2 S.Ct. 501, 108 U.S. 208, 27 L.Ed. 705.

U.S.N.C. 1941. Under the statute providing that the power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice, it is not sufficient that the misbehavior charged has some direct relation to the work of the court, since the word "near" suggests physical proximity not relevancy, and the words "so near thereto" have a geographical and not a causal connota-

tion. Jud.Code § 268, 28 U.S.C.A. § 385.—*Nye v. U.S.*, 61 S.Ct. 810, 313 U.S. 33, 85 L.Ed. 1172.—*Contempt* 6.

Ct.Cl. 1964. Whether one place is “near” another within contract requiring delivery f.o.b. at or near contractor’s plant must be determined in each case by consideration of particular circumstances.—*Alfred Hofmann & Co. v. U. S.*, 329 F.2d 657, 165 Ct.Cl. 113.—*Sales* 79.

W.D.Mo. 1946. Under evidence, the maintenance of business office by government construction subcontractor in city 35 miles from government project site constituted a compliance with obligation assumed by subcontractor to establish and maintain such office “near” the site of the work.—*Evans Elec. Const. Co. v. Wm. S. Lozier, Inc.*, 68 F.Supp. 256, appeal dismissed 162 F.2d 717, appeal dismissed 162 F.2d 717.—*Contracts* 280(3).

W.D.Va. 1932. Use of word “adjacent,” synonyms of which include “close,” “near,” and “neighboring,” established impropriety of motion in question, inasmuch as property of defendant, which was part of residue, must be distinguished from other property of defendant which was near parcel of land sought to be taken, but which was not part of residue of such parcel.—*U.S. v. Cray*, 2 F.Supp. 870.

Ala. 1921. A complaint for injuries to an employee of defendant mine operator, which avers that while he was engaged in his work as a laborer “near” defendant’s railroad he was run over by cars through the negligence of the locomotive engineer, does not state a cause of action under Code 1907, § 3910, subd. 5, for the negligence of a fellow servant having charge of a train; the word “near” being a relative term does not aver how close the work took plaintiff to the railroad.—*Woodward Iron Co. v. Thompson*, 88 So. 438, 205 Ala. 490.—*Emp Liab* 181.

Ala. 1913. The use of the word “near,” as relating to dangerous agencies, accompanied by the qualifying word “dangerously” or “negligently,” with averments of knowledge of the danger, is good; but, when used alone with “at,” “on,” or “under” a dangerous agency, is bad as an alternative; and to say that a person is at or near a railroad track or crossing, which may be within a distance of from 1 to 50 feet, does not necessarily import a dangerous place.—*Birmingham Ry., Light & Power Co. v. Nicholas*, 61 So. 361, 181 Ala. 491.—*Plead* 20.

Ala.App. 1915. A complaint against a street railway company for carrying a passenger beyond her destination, which alleges that the passenger instructed the conductor to notify and put her off when the car reached the regular stopping place “at or near” a designated street, and that he agreed to do so, but in disregard of his duty negligently failed to notify her or to put her off at that point, but carried her and put her off several blocks beyond, states a cause of action as against the objection that the words “at or near” render the complaint uncertain, though the term “at or near” is ordinarily vague and indefinite as a description of the location of a point or place, “near” meaning either close to

or at no great distance from either this side of or beyond the main object, the distance from it being great or small relatively, depending, as to the matter, on the connection in which the word “near” is used.—*Birmingham, E. & B.R. Co. v. Wilson*, 69 So. 312, 14 Ala.App. 235.

Ark. 1950. In statute providing for descent of intestate nonancestral estate in default of father and mother to brothers and sisters of father and mother and their descendants where there are no kindred who stand in a “near” relation, quoted word was inadvertently substituted for the word “nearer” and should be corrected to read “nearer”. *Arks.Stats.* § 61-111; *Acts* 1937, Act No. 117, § 3.—*Daniels v. Johnson*, 226 S.W.2d 571, 216 Ark. 374, 15 A.L.R.2d 1401.—*Des & Dist* 33.

Ark. 1905. The preposition “at,” when used to denote local position, may mean “in,” “on,” “near,” “by,” etc., according to the context; denoting usually a place conceived of as a mere point. A contract between a railroad and a person for whom it agreed to lay a side track to his mill, releasing the railroad from all liability for injury to stock killed on the tracks of the railroad “at” the spur track or upon the same, has no application to stock killed on the main line near the spur.—*St. Louis Southwestern Ry. Co. v. Stringer*, 86 S.W. 280, 74 Ark. 425.

Cal. 1911. The word “near,” in the Vrooman Act, St.1885, p. 147, as amended by St.1891, p. 196, providing for the posting of notices in street assessment proceedings “on or near the chamber door of” the city council, etc., is a relative term, and its meaning must be determined by reference to the subject-matter, and the posting of the notices on a bulletin board in the city hall in which the council chamber was located was sufficient where such bulletin board was in plain view from the main entrance of the hall, and so placed as to be likely to bring the notices to the attention of persons visiting the council chamber, though the bulletin board was far removed from the council chamber.—*Haughwout v. Percival*, 119 P. 649, 161 Cal. 491, *Am. Ann. Cas.* 1913D,115.—*Mun Corp* 294(7).

Colo. 1967. “Near” as used in statute directing board when reviewing application for liquor license to consider the number, type, and availability of liquor outlets located in or near the neighborhood is a spatial concept denoting close by, neighboring, or not far from. *C.R.S.* ’63, 75-2-42.—*Anderson v. Spencer*, 426 P.2d 970, 162 Colo. 328.—*Int Liq* 69.

Ga. 1929. The word “near” as applied to space is a relative term without positive or precise meaning, depending for its signification on the subject-matter in relation to which it is used and the circumstances under which it becomes necessary to apply it to surrounding objects, and as used in *Laws* 1927, p. 56, par. 66, § 2, imposing a tax on lumber manufacturers or dealers in or near cities of a certain size, it necessarily leaves to the tax officer the discretion of determining in many cases that some persons may be liable and others not liable, making the tax invalid for uncertainty.—*Case-Fowler Lumber Co. v. Winslett*, 149 S.E. 211, 168 Ga. 808.

Ga. 1929. Petition enjoining use of funds because proposed road $3\frac{1}{2}$ miles from town did not comply with advertisement requiring road "near" town held insufficient.—*Sigman v. Newton County*, 147 S.E. 586, 168 Ga. 122.—High 130.5.

Ga. 1898. "At" and "near" may be considered synonymous.—*Minter v. State*, 30 S.E. 989, 104 Ga. 743.

Ga.App. 1911. Laws 1905, p. 114, makes it unlawful for a person to be in an intoxicated condition on any public street or highway. Held, that the word "on" is not synonymous with "near," and one could not be convicted under the act for being intoxicated on a porch or shed of a store, within 15 to 30 feet of a public road.—*Hutchinson v. State*, 70 S.E. 63, 8 Ga.App. 684.—Drunk 10.

Idaho 1924. The words "at the mill," as used in C.S. § 7357, granting a laborer's lien on saw logs manufactured into lumber, do not mean exclusively "contiguous to" or "attached to," but may mean "near," "in the vicinity of," or "connected with" the mill.—*Abernathy v. Peterson*, 225 P. 132, 38 Idaho 727.—Logs 26(6).

Ill. 1947. Agency station 4.9 miles distant by rail and 6.7 miles by highway is "near" station which was sought to be converted into a prepay station, so that finding of Commerce Commission that there was no agency station "near" community was unsupported.—*Atchison, T. & S. F. Ry. Co. v. Illinois Commerce Commission*, 74 N.E.2d 885, 397 Ill. 406.—R R 225.

Ill. 1909. Where a railroad had power to condemn adjacent land for the enlargement of its station and terminal facilities, the term "adjacent" should be construed to mean "lying near," "neighboring," but not necessarily in contact. The word is sometimes said to be synonymous with "adjoining," "near," "contiguous." It has no arbitrary meaning or definition, but its meaning must be determined by the object sought to be accomplished by the provision in which it is used.—*Chicago & N.W. Ry. Co. v. Chicago Mechanics' Institute*, 87 N.E. 933, 239 Ill. 197.—Em Dom 20(2).

Ill. 1903. The word "contiguous," as used in the statute and an ordinance authorizing the assessment of contiguous property for the payment of a street improvement, means "in actual or close contact," "touching," "adjacent," or "near," and only such lots as abut on the street can be assessed.—*Langlois v. Cameron*, 66 N.E. 332, 201 Ill. 301.

Ill. 1901. The word "adjacent" is defined by Webster and other lexicographers to mean "to lie near"; "close, or contiguous." It is sometimes said to be synonymous with "adjoining," "near," "contiguous." In some decisions court have held it to mean "in the neighborhood or vicinity of"; in others "adjoining or contiguous to."—*People ex rel. Sackmann v. Keechler*, 62 N.E. 525, 194 Ill. 235.

Ill.App. 1 Dist. 1986. Definition of "adjacent" varies depending on its context, and may be synonymous with either "adjoining," or with "near," or "in the neighborhood or vicinity of."—*Foster & Kleiser, a Div. of Metromedia, Inc. v. City of Chicago*,

100 Ill.Dec. 481, 497 N.E.2d 459, 146 Ill.App.3d 928, appeal denied.—Zoning 233.

Ind.App. 1 Div. 1909. "Near" is a relative term, the precise import of which can only be determined by the surrounding facts and circumstances in the case in which it is used, and so an averment that plaintiff lived near a telegraph station is not equivalent to an allegation that he lived within a mile thereof.—*Western Union Telegraph Co. v. Klitzke*, 89 N.E. 405, 45 Ind.App. 550.

Ind.App. 1 Div. 1909. Stating that plaintiff was in front of and "near" to defendant's car alleged to have injured her when it started was not sufficiently certain to warrant a conclusion that the starting of the car was negligence as matter of law; the word "near" being an indefinite word which may mean a foot, a chain, or any other distance.—*Cobe v. Malloy*, 88 N.E. 620, 44 Ind.App. 8.

Kan. 1937. The word "near" is relative in its signification. What would be near in one locality would not be in another. Each case must be governed by its special circumstances. The Legislature, by amendatory statute providing that counties might unite in construction of bridge "on or near to a county line," intended to liberalize statute so that engineers might exercise their skill and discretion in laying out highway. Gen. St.1935, 68-1122.—*State ex rel. Downer v. Board of Com'rs of Kearny County*, 72 P.2d 67, 146 Kan. 461.

Ky. 1941. In automobile occupants' action for injuries sustained in grade crossing collision where view of tracks could not be had until automobile was 20 or 25 feet from crossing, and entire testimony of occupants indicated that they looked for the approach of train at a point near the crossing, statements that they did not look for approaching train until "right on" the crossing, by which occupants meant "near" the crossing, did not establish contributory negligence as a matter of law so as to authorize directed verdict for railroad, since the quoted words in common parlance are used to express the meaning "near."—*Vinson v. Southern Ry. System*, 154 S.W.2d 734, 287 Ky. 625.—R R 350(22.1).

Miss. 1950. Word "at" and "near" are synonymous.—*Clark v. Sayle*, 45 So.2d 138, 208 Miss. 559.

Miss. 1946. "About" a specified date, as the date of breach of contract, is equivalent of "near."—*Heath v. Williams*, 25 So.2d 706.—Contracts 210.

Miss. 1895. In a provision that certain offices should be kept at or near a courthouse, the words "at" and "near" are synonymous.—*Harriss v. State*, 18 So. 387, 72 Miss. 960.

Mo. 1955. The words "on or about", in instruction stating averred date of commission of offense, do not put the time at large, but indicate that it is stated with approximate certainty, and mean "approximately", "about", "without substantial variance from" "near."—*State v. Armstead*, 283 S.W.2d 577.—Crim Law 772(4).

Mo. 1932. Construction of highway within two miles of town constituted substantial compliance with statutory requirement that it be "near" town (Rev.St.1929, § 8120).—Benton County v. State Highway Com'n, 52 S.W.2d 995.—High 103.1.

Mo.App. 1939. Group policy insuring against loss of foot "at" or above the ankle joint, fixed a definite and exact point of severance so near the point of articulation between ankle and foot as to cause severance to destroy effectiveness of joint as a joint as against contention that word "at" meant "near".—Adair v. General American Life Ins. Co., 124 S.W.2d 657.—Insurance 2558(3).

Neb. 1977. The words "on or about" do not put the time at large, but indicate that it is stated with approximate certainty; such phrase means "proximately," "about," "without substantial variance from," and "near".—State v. Metzger, 256 N.W.2d 691, 199 Neb. 186.—Crim Law 565.

Nev. 1916. A devise conditioned on the establishment of an orphans' home "near" a city was satisfied by its establishment within city corporate limits.—In re Hartung's Estate, 160 P. 782, 40 Nev. 262, rehearing denied 161 P. 715, 40 Nev. 262.—Char 38.

N.Y. 1916. Under Laws 1886, c. 572, § 1, providing for filing notice of an action for damages against a city of over 50,000 population, notice that an accident happened at a "hole in the pavement on the public highway at about Washington street, near Vestry street," was insufficient; "near" meaning "not distant from," and being wholly relative, and locating nothing with precision.—Casey v. City of New York, 111 N.E. 764, 217 N.Y. 192.—Mun Corp 812(7).

N.Y.A.D. 4 Dept. 1905. A notice stating that plaintiff, while riding along A. street "near" B. street, was thrown from his wagon by reason of the fact that defendant negligently allowed a large stone to be in the highway at that point, but failing to specify the date when the accident happened, and not referring to any house or other monument upon A. street by which the specific location of the stone—which was in fact 300 feet distant from B. street—could be fixed, was not sufficiently definite to satisfy Laws 1895, p. 733, c. 394, § 345, requiring claims against the city for injuries caused by the defective condition of the streets to be presented to the common council in writing, "describing the time, place, cause, and extent of the damage or injury".—Forsyth v. City of Oswego, 95 N.Y.S. 33, 107 A.D. 187.—Mun Corp 812(7).

N.Y.City Ct. 1940. The word "about" is correlative of "near" which means not distant from. The term "near" is wholly relative and locates nothing with any degree of precision.—Todd v. City of New York, 23 N.Y.S.2d 884.

N.C. 1906. The word "near," as applied to space, can have no positive or precise meaning. It is a relative term depending for its signification on the subject-matter in relation to which it is used and the circumstances under which it becomes necessary to apply it to surrounding objects. A charter grant-

ing a railroad a right to cross a river "above" or "near" a certain town conferred a right to locate its bridge "below" such town.—Pedrick v. Raleigh & P.S.R. Co., 55 S.E. 877, 143 N.C. 485, 10 L.R.A.N.S. 554.

N.C. 1904. The word "at," when used to designate a place, may, and often must, mean "near to." It is less definite than "in" or "on"; "at" the house may be "in" or "near" the house. The language of Acts 1903, c. 375, § 15, providing that a township board shall "begin road improvements at the courthouse on the four main roads in said township," may be sustained and given effect by beginning work on the roads at the boundary of the corporation leading to the courthouse where they merge into streets.—Town of Waynesville v. Satterthwait, 48 S.E. 661, 136 N.C. 226.

N.C. 1891. "Near to," as used in an instruction in an action against a railroad company that it was negligence to allow weeds or bushes to grow near to the track, was too indefinite, in that it left the precise distance to which the duty extended so vague and uncertain that railroad companies could not provide against liability, however watchful their servants might be, except by keeping clear of weeds or bushes the whole right of way. "Near," in common parlance, means either close or at no great distance, and might have been understood by the jury as a declaration that it would be negligence to leave weeds or bushes that would hide from view anywhere on the right of way.—Ward v. Wilmington & W.R. Co., 13 S.E. 926, 109 N.C. 358.

N.D. 1974. Word "approximately" within contract for sale of approximately 600 steers and approximately 300 heifers located on specified range meant "near" and seller's delivery of 398 steers and 341 heifers did not constitute substantial compliance with the contract, despite contention that sales contract called for delivery only of the lot of steers that sellers had on the specified range.—Johnsrud v. Lind, 219 N.W.2d 181.—Sales 71(3), 164.

Okla. 1965. "Near" within constitutional provision authorizing incorporated towns to issue with consent of voters bonds to secure and develop industry within or near the municipality has no precise meaning as applied to space or distance but is relative term and may be used to denote distances which within themselves differ widely. O.S.Supp.Const. art. 10, § 35.—Sublett v. City of Tulsa, 405 P.2d 185, 1965 OK 78.—Mun Corp 911.

Pa.Super. 1939. The term "near" cannot be used as the equivalent of exact distances.—Picharella v. Owens Transfer Co., 5 A.2d 408, 135 Pa.Super. 112.

S.C. 1911. Civ.Code 1902, § 203 (See Code 1942, § 2296), provides that at all general elections held in the state the same shall be conducted at the polling precincts fixed by law in the various counties, cities, and towns, the location of which shall be as designated, and then declares that, at the Waverly precinct, in R. county, the polling place shall be "at or near the fork of the Rice Creek spring and Camden road." Held, that it could not be said as a matter of law that a polling place located a quarter

of a mile from the crossing of the stream and road was not properly located "near" such point.—*Verner v. Muller*, 71 S.E. 654, 89 S.C. 117.—Elections 203.

Tenn. 1944. The rule promulgated by Commissioner of Finance and Taxation which prohibited issuance of a retail liquor dealer's license to a relative of any person or other person having any interest in a place of business where a license has been revoked for privilege of doing business "near" the location of the establishment whose license was revoked, included a prohibition against conduct of a business at the identical place of establishment whose license was revoked. Pub.Acts 1939, c. 49.—*McCanless v. State ex rel. Hamm*, 181 S.W.2d 154, 181 Tenn. 308, 153 A.L.R. 832.—Int Liq 59(1).

Tenn. 1929. Court must assume Legislature had in mind modern conditions when authorizing city to acquire land "near" city for park. Priv.Acts 1927, c. 426, § 1, subsec. 3.—*City of Nashville v. Vaughn*, 14 S.W.2d 716, 158 Tenn. 498.—Mun Corp 221.

Tenn. 1929. City could acquire land adjoining park about five miles from city under statute authorizing it to acquire land "near" city for park purposes. Priv.Acts 1927, c. 426, § 1, subsec. 3.—*City of Nashville v. Vaughn*, 14 S.W.2d 716, 158 Tenn. 498.—Mun Corp 221.

Tenn. 1910. The title of its 1909, c. 1, an act to prohibit the sale of intoxicating liquors as a beverage "near" any schoolhouse, where a school is kept, whether it be in session or not, cannot be said not to warrant the provision of the act prohibiting such a sale within four miles of such a schoolhouse, especially where such provision has repeatedly been made before under a like title; the word "near" any schoolhouse, where a school is kept, whether it be in session or not, cannot be said not to warrant the provision of the act prohibiting such a sale within four miles of such a schoolhouse, especially where such provision has repeatedly been made before under a like title; the word "near" being a relative term, the proper import of which is dependent on the sense and connection in which it is used, considered together with the purposes to be accomplished.—*J.W. Kelly & Co. v. State*, 132 S.W. 193, 123 Tenn. 516.—Int Liq 162.

Tenn. 1910. The title of Acts 1909, c. 1, an act to prohibit the sale of intoxicating liquors as a beverage "near" any schoolhouse, where a school is kept, whether it be in session or not, cannot be said not to warrant the provision of the act prohibiting such a sale within four miles of such a schoolhouse, especially where such provision has repeatedly been made before under a like title; the word "near" being a relative term, the proper import of which is dependent on the sense and connection in which it is used, considered together with the purposes to be accomplished.—*J.W. Kelly & Co. v. State*, 132 S.W. 193, 123 Tenn. 516.—Statut 114(6).

Tex.Crim.App. 1941. The words, "at or near any place where a labor dispute exists," in statute making it a felony for person to assemble with others at or near any such place and prevent or attempt to prevent any person from engaging in

lawful vocation by force or violence, do not invalidate balance of statute, even if they are too uncertain and indefinite to apprise alleged violator of meaning of word "near," because no rule by which lawful distance may be ascertained is stated, as word "at" is synonymous with "on," and the act provides that invalidity of any portion thereof shall not affect balance. *Vernon's Ann.P.C. art. 1621b*.—Ex parte *Frye*, 156 S.W.2d 531, 143 Tex. Crim. 9.—Crim Law 13.1(4); Statut 64(6).

Tex.Crim.App. 1941. The word "near" in statute making it a felony for person to assemble with others at or near any place where a labor dispute exists and prevent or attempt to prevent any person from engaging in lawful vocation by force or violence is not so indefinite as to invalidate statute, as such word is relative term, meaning "within a little distance from, close or upon," and, as used in such statute, means within general sphere or scope of labor dispute so that offending party may accomplish his purpose and object. *Vernon's Ann.P.C. art. 1621b*.—Ex parte *Frye*, 156 S.W.2d 531, 143 Tex. Crim. 9.—Crim Law 13.1(4); Labor 284.

Tex.Crim.App. 1937. A statute, prohibiting possession of whisky "at or near" premises wherein wine and beer were legally sold, authorized prosecution for such possession under an information alleging possession "on" premises and was not indefinite or vague, since the word "near," if indefinite, could be eliminated leaving the word "at" which was practically synonymous with "on," especially in view of statute relative to saving clauses; the word "near" meaning within a little distance from, close, or upon. Acts 1935, 2d Called Sess., c. 467, art. 1, § 3(c); *Vernon's Ann.P.C. arts. 6, 667-22*.—*Moore v. State*, 112 S.W.2d 194, 133 Tex. Crim. 330.—Crim Law 13.1(9).

Tex.Ct.App. 1891. In an indictment charging an assault "at" a certain schoolhouse, "at" will be construed to mean "in." The word "at" has been construed as equivalent to "in," or "within" to "in," or "near" to "into." Mr. Bishop says it is immaterial whether "in" or "at" be used in the allegation of place in an indictment.—*Blackwell v. State*, 17 S.W. 1061, 30 Tex.App. 416.

Tex.Civ.App.—Fort Worth 1936. "Near" is not a "legal term" within statute requiring trial court in submitting special issues to explain legal terms, but is an ordinary word of simple meaning in common use which any ordinary persons would understand. Rev.St.1925, art. 2189.—*Roeser v. Coffey*, 98 S.W.2d 275.—Trial 219.

Tex.Civ.App.—Fort Worth 1936. In suit to cancel mineral deed on ground of false representations, wherein special issues were submitted as to whether purchaser had represented that the well had been drilled near property which resulted in a dry hole showing no oil, failure to define "near" held not error. Rev.St.1925, art. 2189.—*Roeser v. Coffey*, 98 S.W.2d 275.—Trial 219.

Tex.Civ.App.—Fort Worth 1916. The proceeds of bonds issued for the erection of a bridge "at or near" a designated crossing, under articles 605, 606, *Vernon's Sayles' Ann.Civ.St.1914*, *Vernon's Ann.*

Civ.St. arts. 701, 703, 705, 719, as to the issuance of county bonds, cannot be diverted by the county commissioners' court to the construction of a bridge at another crossing five or six miles away; the latter crossing not being "near" the designated one.—*Moore v. Coffman*, 189 S.W. 94, writ granted, affirmed 200 S.W. 374, 109 Tex. 93.—Counties 195.

Tex.Civ.App.—Galveston 1925. Description in sheriff's deed held to describe land in controversy; "near."—*Clements v. Texas Co.*, 273 S.W. 993, writ refused.—Execution 319.

Tex.Civ.App. 1909. Under Const. art. 9, § 2, authorizing a county seat to be removed to a place within five miles of the center of the county, and under Rev.St.1895, art. 813, Vernon's Ann.Civ.St. art. 1597, authorizing the county commissioner to issue a certificate designating the center of the county, a certificate, designating the center of the county at a point within the boundaries of a 320-acre survey, near the center of such survey, is not indefinite by the use of the word "near," since it would be impracticable to determine the exact spot.—*Kilgore v. Jackson*, 118 S.W. 819, 55 Tex.Civ. App. 99, writ refused.—Counties 34(1).

Wis. 1957. Statute declaring it unlawful for the operator of any vehicle to overtake and pass any other vehicle "at" an intersection of highways is a penal statute and word "at" must be strictly construed and is not the equivalent of "near." W.S.A. 85.16(6), 85.91.—*Behr v. Larson*, 83 N.W.2d 157, 275 Wis. 620.—Autos 324.

NEAR BEER

Ga. 1914. "Near beer" is a beverage intended as a substitute for beer, and is in reality a malt liquor.—*Howard v. Acme Brewing Co.*, 83 S.E. 1096, 143 Ga. 1, Am. Ann. Cas. 1917A, 91.—Int Liq 122.

Ga.App. 1946. "Near beer" mean that class of malt liquors which contains so little alcohol that they will not produce intoxication even though drunk to excess.—*Williams v. State*, 36 S.E.2d 839, 73 Ga.App. 421.

Ga.App. 1912. The term "near beer" does not import an intoxicating liquor.—*Abbott v. State*, 74 S.E. 621, 11 Ga.App. 43.—Int Liq 134.

Ga.App. 1912. On trial for violating the prohibitory law, Pen.Code 1910, § 426, evidence that accused had a license to sell "near beer" was irrelevant.—*Abbott v. State*, 74 S.E. 621, 11 Ga. App. 43.—Int Liq 176.

Ga.App. 1912. Evidence of a sale of "near beer," without proof that it will produce intoxication, does not show violation of Pen. Code 1910, § 426.—*Abbott v. State*, 74 S.E. 621, 11 Ga.App. 43.—Int Liq 236(13).

Ga.App. 1911. The court will take judicial notice of the nonintoxicating qualities of "near beer," a term currently used to designate all that class of malt liquors which contain so little alcohol that they will not produce intoxication, though drunk to excess, and including all malt liquors not within the

purview of the general prohibition law.—*Loh v. Mayor and Council of Macon*, 70 S.E. 149, 8 Ga. App. 744.—Crim Law 304(20).

Ga.App. 1910. "Near beer" is an imitation of beer.—*Manus v. State*, 66 S.E. 1037, 7 Ga.App. 377.

Ga.App. 1909. An ordinance regulating the sale of "near beer" is not unconstitutional as making an arbitrary classification.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Const Law 208(6).

Ga.App. 1909. An ordinance regulating the sale of "near beer" is not unconstitutional as denying the equal protection of the laws in violation of Const.U.S. Amend. 14 (Civ.Code 1895, § 6030).—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Const Law 240(3).

Ga.App. 1909. An ordinance regulating the sale of "near beer" is not in violation of Const.U.S. Amend. 14 (Civ.Code 1895, § 6030), forbidding a deprivation of property without due process of law.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Const Law 296(1).

Ga.App. 1909. As the General Assembly by the "near beer" tax act of 1908, Acts 1908, p. 112, has expressed the general policy of permitting the sale of "near beer" by those who pay the tax, a municipality may not, in the absence of express charter authority, prohibit its sale entirely, but may enact reasonable regulations governing its sale.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 11.

Ga.App. 1909. An ordinance forbidding the sale of "near beer" to a minor is unenforceable, as that is an offense against the general law of the state.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 11.

Ga.App. 1909. Where an ordinance regulating the sale of "near beer" is a thinly disguised purpose to prohibit, and not regulate, it is void for repugnancy to the policy of the state to permit the sale of "near beer," by those who pay the tax imposed by the "near beer" tax act of 1908, Acts 1908, p. 1112.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 11.

Ga.App. 1909. A permit to sell "near beer" at a place within the designated limits may be refused, where the sale in that particular place would be subversive of the best interests of the city.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 59(1).

Ga.App. 1909. In order that a municipality may pass upon the character of an applicant to sell "near beer," it may require a written application for the granting of a permit or license as a condition precedent to engaging in the business.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 64.

Ga.App. 1909. There is nothing unreasonable in an ordinance requiring one engaging in selling "near beer" to give bond to keep an orderly house, to comply with the regulations governing the busi-

ness and not to violate the state law, or even to pay such fines as may be imposed for violation of the ordinance.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 83.

Ga.App. 1909. The requirement of an ordinance that the surety on a bond of one about to sell “near beer” shall be a guaranty company is unreasonable.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 84.

Ga.App. 1909. The requirement of an ordinance that the sureties on a bond of one about to sell “near beer” shall be freeholders of the city is unreasonable.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 84.

Ga.App. 1909. The provision in an ordinance regulating the sale of “near beer,” that a license shall be forfeited if the holder is convicted of violating the state liquor law or an ordinance, is valid.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 106(4).

Ga.App. 1909. The selling of “near beer” it a business which admits of strict regulation, and stands in a different class from the business of selling drugs, soda water, and similar liquids, and regulations may be upheld which would be unreasonable if applied to other business.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 110.

Ga.App. 1909. An indigent Confederate soldier, who has paid the state tax on the sale of “near beer” is exempt from a license imposed on that business, but not from such other reasonable regulations as the municipality may impose.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 112.

Ga.App. 1909. The provision of an ordinance forbidding the keeper of a “near beer” stand to have in his place of business any device to obscure the view of the interior is valid.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 115.

Ga.App. 1909. Provisions of an ordinance regulating the sale of “near beer,” forbidding drinking on the premises, and against loitering and the keeping of chairs, tables, etc., in the room, are reasonable.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 116.

Ga.App. 1909. The prohibition of an ordinance regulating the sale of “near beer” that that business shall not be carried on in connection with any other is reasonable.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 116.

Ga.App. 1909. An ordinance as to the sale of “near beer,” providing that minors shall not be permitted to enter the place where it is sold, is reasonable.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 119.

Ga.App. 1909. An ordinance providing that bottles, barrels, etc., containing “near beer” shall be plainly stamped to show their contents and the names of the manufacturers, is reasonable.—*Camp-*

bell v. City of Thomasville, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 122.

Ga.App. 1909. An ordinance requiring a dealer in “near beer” to furnish samples to be tested to ascertain the amount of alcohol contained in the different drinks offered for sale is reasonable.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 122.

Ga.App. 1909. An ordinance forbidding a sale of less than a pint of “near beer” is valid.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 124.

Ga.App. 1909. An ordinance forbidding a sale of more than one quart of “near beer” to one person in a day is unreasonable.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 124.

Ga.App. 1909. The business of selling “near beer” may be confined to reasonable territorial limits which should be fairly extensive, and not arbitrarily narrow.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 130.

Ga.App. 1909. An ordinance limiting the sale of “near beer” to a space of 900 yards on a single street, including the parks and an intersecting street, and requiring the consent of all owners and occupants of stores, residences, and other buildings within a radius of 100 yards of the place where the business is to be conducted, is unreasonable and substantial prohibition.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 130.

Ga.App. 1909. “Near beer” is a term used to designate all malt liquors which contain so little alcohol that they will not produce intoxication, though drunk to excess, and includes all malt liquors not within the purview of the general prohibition law.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Int Liq 134.

Ga.App. 1909. The unreasonable requirement of an ordinance regulating the sale of “near beer,” that the sureties on a bond given by a person about to engage in that business shall be freeholders of the city, is not such a vital part of the ordinance as to render it void in toto.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Mun Corp 111(4).

Ga.App. 1909. A person who has made no application to the city council for a license to sell “near beer,” and has tendered no bond at all, is not in a position to complain of the requirement that the sureties on the bond shall be freeholders of the city.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Mun Corp 121.

Ga.App. 1909. An indigent Confederate soldier, being exempt from the payment of a license imposed by a municipality on the sale of “near beer,” cannot raise the question that the license is excessive, as he is not legally interested.—*Campbell v. City of Thomasville*, 64 S.E. 815, 6 Ga.App. 212.—Mun Corp 121.

Idaho 1910. “Near beer,” being a malt liquor, falls within the definition of section 31 of the local

option statute (Sess.Laws 1909, p. 18), and is as a matter of law an intoxicating liquor.—*Ex parte Lockman*, 110 P. 253, 18 Idaho 465, 46 L.R.A.N.S. 759.—*Int Liq* 122.

Va. 1909. The object of section 23½ of the act of Assembly approved March 12, 1908, commonly called the "Byrd Liquor Law" was to regulate and control the sale and distribution of the by-products of the brewery commonly known as "malt beverage," sometimes called "Small Brew" and "Near Beer."—*Com. v. Henry*, 65 S.E. 570, 110 Va. 879, 26 L.R.A.N.S. 883.—*Int Liq* 122.

NEAR BY

C.A.10 (Kan.) 1964. "Nearby", within statute providing for appointment by Secretary of Agriculture of review committee composed of three farmers from same or nearby counties, means near or close at hand, rather than adjoining or contiguous, and Kansas committee was properly composed although one member came from county nearest corner of which was five miles from corner of plaintiff's county. Agricultural Adjustment Act of 1938, § 363 as amended 7 U.S.C.A. § 1363.—*Jilka v. Saline County, Kan.*, 330 F.2d 73.—*Agric* 3.3(3).

Ark. 1898. The word "at," when used to denote local position, may mean "in," "on," or "near by," according to the context, denoting usually as the names of towns. If the city is of great size, however, "in" is commonly used, unless the city is conceived of as a mere geographical point, when "at" is used, as, for instance, "our financial interests center 'at' New York." With the names of cities and towns, the use of "at" or "in" depends not so much upon the size of the place, as upon the point of view. When we think merely of the local or geographical point, we use "at"; when we think of inclusive space, we employ "in." Primarily the word "at" expresses the relation of nearness, the relation of presence, nearness in place. It is less definite than "in" or "on." "At the house" may be "in" or "near" the house. To determine the sense in which the word is used, the subject-matter with reference to which it is used must be taken into consideration. The word, in a subscription to a college conditioned to be located "at" a certain town, was construed to have been used only as denoting a place conceived of as a mere geographical point, and not as fixing a condition that the college should be located within the corporate limits of such town.—*Rogers v. Gal-loway Female College*, 44 S.W. 454, 64 Ark. 627, 39 L.R.A. 636.

NEARBY RESIDENTS

N.Y.Sup. 1954. Under Town Law section providing that persons aggrieved by decision of Zoning Board of Appeals may petition court for review, "nearby residents" as well as "adjoining owners" have status of "persons aggrieved", at least until question of their status is properly raised and presented for adjudication in a particular case, and where no such objection was interposed before board, such persons would be considered "persons aggrieved" by court. Town Law, § 267, subd. 7.—

Bayport Civic Ass'n v. Koehler, 138 N.Y.S.2d 524.—*Zoning* 571.

NEAR COMPLETION

N.Y.A.D. 4 Dept. 1925. Under Highway Law, § 132, giving state cause of action for costs of completing contract after abandonment by original contractor, where work of completion of abandoned contract was done under a unit price contract, such that cost of completion could not be determined before completion of work, state was not entitled to recover, where evidence did not establish more than that work was "near completion"; "cost" meaning state's expenditures.—*Fred E. Gross & Son v. State*, 212 N.Y.S. 222, 214 A.D. 386, affirmed in part, appeal dismissed in part 154 N.E. 634, 243 N.Y. 629.—*High* 113(4).

NEARER

Ark. 1950. In statute providing for descent of intestate nonancestral estate in default of father and mother to brothers and sisters of father and mother and their descendants where there are no kindred who stand in a "near" relation, quoted word was inadvertently substituted for the word "nearer" and should be corrected to read "nearer". *Arks.Stats.* § 61-111; *Acts* 1937, Act No. 117, § 3.—*Daniels v. Johnson*, 226 S.W.2d 571, 216 Ark. 374, 15 A.L.R.2d 1401.—*Des & Dist* 33.

Iowa 1909. No one is "nearest" in degree of blood, if someone else be "nearer."—*In re Weaver's Estate*, 119 N.W. 69, 140 Iowa 615, 22 L.R.A.N.S. 1161, 17 Am. Ann. Cas. 947.

NEAREST

Ariz. 1926. Requirements of publication in newspaper "nearest" mining claim of delinquent co-owners construed. Under Rev. St. U. S. § 2324 (Comp. St. § 4620), authorizing publication by co-owner of mining claim in newspaper published "nearest" claim on failure of co-owners to contribute their share, means nearest community to claim, and, if there are two or more newspapers in such community, a publication in any one of them satisfies statute, though another was a few hundred feet nearer the claim.—*Strode v. Wende*, 242 P. 868, 29 Ariz. 463.—*Mines* 23(6).

Ariz. 1926. Requirements of publication in newspaper "nearest" mining claim of delinquent co-owners construed.—*Strode v. Wende*, 242 P. 868, 29 Ariz. 463.—*Mines* 23(6).

Ill. 1887. A codicil to a will was as follows: "I give and bequeath to my stepson A. the use or rents accruing from my house, and one acre of land that said house stands upon, after his father's death, provided his father does not sell said property; which privilege I grant him provided it is necessary for his maintenance. After the said A.'s decease, the said house and land is to go to his nearest heirs." *Held*, that the word "nearest" did not qualify the word "heirs," and that, under the rule in *Shelley's Case*, A. took the fee to the land subject to the estate and power reserved in his father by

the terms of the devise.—*Ryan v. Allen*, 12 N.E. 65, 120 Ill. 648.—Wills 608(3.1).

Ill. 1887. A will bequeathed “to my stepson O. the use of rents accruing from my house and one acre of land that said house stands upon, after his father’s death, provided his father does not sell the property, and after O.’s decease the house and land is to go to his nearest heirs.” Held, that the word “nearest” did not qualify the word “heirs,” and hence, under the rule in *Shelley’s Case*, O. took the fee to the land subject to the estate and power reserved in his father. When there are a number of persons falling within the designation of “heirs”—that is, having the right to take by inheritance from the ancestor, although they may not take equally as to amount—the law furnishes no means of determining which one or more of the common class is or are nearest in the quality of right of inheritance. The word “nearest,” like “next” or “first,” prefixed to the term “heirs” or “heir,” without the use of other words of limitation on the devise to the heir, will not vary the effect of the devise. The “nearest heirs” are all those persons upon whom the law would cast the inheritance in the first instance upon the death of the ancestor intestate, and there can be no other heirs. Those who are heirs are therefore necessarily “nearest heirs,” and, conversely, “nearest heirs” can be no other than heirs generally, and must include all those who stand in the same relation to the ancestor in respect of the right of inheritance.—*Ryan v. Allen*, 12 N.E. 65, 120 Ill. 648.

Me. 1955. Under statutory provision that an accused person shall be brought or ordered to appear before trial justice whose usual place of holding court is “nearest” to where offense is alleged to have been committed, the ascertainment of “nearest” trial justice is by measure over shortest usual route of travel from alleged locus of offense to locus which is the usual place of holding court of trial justice and contiguity of town lines is not the test. R.S.1944, c. 133, § 10.—*State v. Nolan*, 111 A.2d 478, 150 Me. 355.—Crim Law 250.

Minn. 1965. Instruction that word “proximate” means “nearest” was misleading.—*Staloch v. Belsaas*, 136 N.W.2d 92, 271 Minn. 315.—Neglig 1741.

N.J.Ch. 1901. Under a bequest to the “next of kin according to the laws of the state of New Jersey,” the words, if they mean anything, mean that the next of kin are to take as the laws of New Jersey prescribe, but by these laws, in cases of intestacy, where there are brothers and sisters and children of a deceased brother, the children take the brother’s share by right of representation, and the living brothers and sisters do not take the whole. If to the words “next of kin” in the will under consideration the literal construction of “nearest” should be given, the result would be that the nearest of kin would take, not the whole, but only their shares, and the testator would die intestate as to the rest. Therefore the term will be construed to mean the statutory next of kin; that is, next of kin who are in fact the nearest, and those who by statute stand in the place of such nearest.—

Duffy v. Hargan, 50 A. 678, 62 N.J.Eq. 588, affirmed 52 A. 1131, 63 N.J.Eq. 802.

N.Y.Sup. 1924. A devise of a remainder to testator’s “nearest kin” held to mean those who were nearest to him in consanguinity, and went to his brother and sister, to the exclusion of children of deceased sisters; “nearest” meaning nearest in degree counting from specified stock.—*Haas v. Speenburgh*, 203 N.Y.S. 202, 122 Misc. 458, affirmed 207 N.Y.S. 847, 212 A.D. 844.—Wills 509.

N.Y.Sup. 1903. In Liquor Tax Law, § 17, subd. 8, requiring the consent of owners of dwellings, the nearest entrance of which is within 200 feet, measured in a straight line, of the nearest entrance to the premises on which traffic in liquor is to be carried on, the expression “nearest entrance to the dwelling” includes all entrances, front, side, or rear, and by the same course of reasoning the “entrance to the place where the liquor is to be sold” means any entrance. By the use of the word “nearest,” the statute clearly contemplates that there might be more than one, and, as it is not probable that there would ordinarily be more than one front entrance, it must include rear and side entrances.—In re *McMonagle*, 84 N.Y.S. 1068, 41 Misc. 407.

N.Y.Sur. 1946. “Nearest” means immediately adjacent to, in closest proximity.—In re *Dicks’ Will*, 66 N.Y.S.2d 264, 187 Misc. 1075.

S.C. 1907. There is a shade of difference between the words “next” and “nearest.” The word “next,” in a certificate of membership of a mutual benefit society, providing for payment of a benefit on the death of a member to the beneficiary named, who under the bylaws must be either the wife, children, adopted children, parents, etc., and, if the member outlived the beneficiary named and died without naming another beneficiary, the benefit was to go to the member’s “next” living relation in the order named, is used as a synonym of “nearest,” and refers to the member and not to the beneficiary. Therefore, where a member named his wife as beneficiary, and she died, and he married again, leaving a second wife, without having changed the beneficiary, the second wife, and not his children, took the benefit.—*Speegle v. Sovereign Camp of The Woodmen of the World*, 58 S.E. 435, 77 S.C. 517.

Tex.Civ.App.—San Antonio 1936. Courts will disregard surplus or synonymous words, such as “next” or “nearest” when the two are used together, if by doing so intention of testator will be made plain, and to conform to spirit of laws of descent and distribution, when such intention, so ascertained, is not negated by express language or necessary implication from express language used in other parts of will.—*Bloch v. Woellert*, 90 S.W.2d 653.—Wills 463.

Tex.Civ.App.—San Antonio 1936. Will providing by specific bequest for certain legal heirs of varying degrees of relationship to testator and for others, in varying amounts, residuary clause leaving remainder of estate to “my next nearest heirs” meant testator’s legal heirs according to laws of descent and distribution, including the specific beneficiaries

who were also legal heirs, since the words “next” and “nearest” were synonymous.—*Bloch v. Woelert*, 90 S.W.2d 653.—*Wills* 506(1).

NEAREST ADJACENT SIDE OF HIGHWAY

Ohio App. 2 Dist. 1936. The “nearest adjacent side of highway”, within statute requiring a motorist, when approaching front or rear of a school bus that has stopped on highway, outside limits of a municipality, while receiving or discharging children, to stop automobile not less than ten feet from bus and keep automobile stationary until children have entered bus or have alighted and reached nearest adjacent side of highway, is that side of road nearest to bus, which must necessarily be the right-hand side as that side would be designated by a person facing in direction in which bus is headed. Gen.Code, § 6290; § 12604-1 (repealed 1941. See § 6307-73).—*Pippinger v. State*, 34 N.E.2d 63, 12 O.O. 385, 21 Ohio Law Abs. 194.—*Autos* 324.

Ohio App. 2 Dist. 1936. Where school bus stopped on right side of highway, to discharge children, and a child, after alighting, ran around rear of bus and was crossing highway to left side thereof when struck by defendant's automobile, and automobile was not within ten feet of bus when child reached side of highway nearest where bus was stopped, defendant could not be convicted for violating statute respecting duty of motorists to stop when approaching a school bus that is receiving or discharging children, since child had reached “nearest adjacent side of highway” within the statute before automobile was ten feet from bus. Gen. Code, § 6290; § 12604-1 (repealed 1941. See § 6307-73).—*Pippinger v. State*, 34 N.E.2d 63, 12 O.O. 385, 21 Ohio Law Abs. 194.—*Autos* 324.

NEAREST ADULT RELATIVES

Ga. 1949. Within statute requiring the giving of notice of application for appointment of a lunacy commission to any three of the “nearest adult relatives” of person to be examined, adult children of such person, regardless of their order of birth, are equally related to such person. Code, § 49-604.—*Cannon v. Heard*, 52 S.E.2d 459, 204 Ga. 891.—*Mental H* 129.

Ga.App. 1947. Husband of alleged incompetent was one of her “nearest adult relatives”, within statute requiring notice of lunacy proceeding to be served on three nearest adult relatives of alleged lunatic, and an adjudication of lunacy was void upon showing that no service was had upon husband, though he was resident of state and available for service. Code, § 49-604.—*Anderson v. Smith*, 45 S.E.2d 282, 76 Ga.App. 171.—*Mental H* 129.

NEAREST AKIN

Ill. 1920. REMAINDER TO “NEAREST AKIN” CONSTRUED TO MEAN NEAREST BLOOD RELATIONS. Where a will devised land to testator's son for his support during life, after his death to revert to his “nearest akin,” and the son died leaving a sister, a brother, and nieces and nephews, partition should have been ordered between the sister and brother regardless of the

NEAREST BLOOD CONNECTIONS

nieces and nephews; the term “nearest akin” being construed to mean nearest blood relations and not those who would take under the statute of descent.—*Hammond v. Myers*, 126 N.E. 537, 292 Ill. 270, 11 A.L.R. 315.—*Wills* 509.

Ill. 1920. Where a will devised land to testator's son for his support during life, after his death to revert to his “nearest akin,” and the son died leaving a sister, a brother, and nieces and nephews, partition should have been ordered between the sister and brother regardless of the nieces and nephews; the term “nearest akin” being construed to mean nearest blood relations and not those who would take under the statute of descent.—*Hammond v. Myers*, 126 N.E. 537, 292 Ill. 270, 11 A.L.R. 315.—*Wills* 509.

NEAREST AND LAWFUL HEIR

Mo. 1888. A testator gave his wife a life estate in all his property, remainder in fee one half to his adopted daughter and the other half to the “nearest and lawful heirs of mine and that of my wife, share and share alike.” At the time of the execution of the will and the death of the testator, he and his wife each had brothers and sisters living. The wife afterwards married, and adopted a son of this last husband by a former wife as her heir. Held, that such adopted heir was not the “nearest and lawful heir” within the meaning of the testator, and hence was entitled to no interest under the will, but that the brothers and sisters of the testator's wife, or their representatives, were included within the meaning of the term. By his use of the term it was evident that his intention was that they would not include his adopted heir, and that they meant heirs of his other than such adopted heir. The same terms used in the same connection, when applied to the heirs of his wife, must also have the same meaning; that is, heirs of his wife other than an adopted heir.—*Reinders v. Koppelman*, 7 S.W. 288, 94 Mo. 338.

NEAREST AVAILABLE POINT WHERE SUCH CAR CAN BE REPAIRED

D.Mass. 1968. Under statute providing that defective railroad car may be hauled from place where defect was discovered to nearest available point where car can be repaired, without liability for penalties, phrase “nearest available point where such car can be repaired” means point where repairs can be made without unreasonable risk to safety of employees. Safety Appliance Act of 1910, § 4, 45 U.S.C.A. § 13.—*U. S. v. Boston & M. Corp.*, 294 F.Supp. 356.—*R R* 229(8).

NEAREST BLOOD CONNECTIONS

Iowa 1918. Under Code § 48, par. 24 (I.C.A. § 4.1), requiring degrees of consanguinity to be determined according to civil law, remainder to legatee's “nearest blood connections” went to legatee's sister instead of legatee's nieces and nephews.—*Jones v. Parsons*, 166 N.W. 707, 182 Iowa 1377.—*Wills* 499.

NEAREST BLOOD KIN

Mo.App.W.D. 1981. Phrase “nearest blood kin” in will has no settled meaning to be given wherever it may be found, but where there is no indication that testator had some different intent, definition in restatement of property, to effect that persons described by limitation as conveyees are those who would succeed to the personal property of the designated ancestor if such ancestor died intestate at the time when the group is to be ascertained, will be applied.—*Graves v. Hyer*, 626 S.W.2d 661.—Wills 509.

NEAREST BLOOD RELATION

Mass. 1887. Primarily the words “nearest blood relation” indicate the nearest consanguinity, and they are perhaps more frequently used in this sense than in any other.—*Swazey v. Jaques*, 10 N.E. 758, 144 Mass. 135, 59 Am.Rep. 65.

NEAREST BLOOD RELATIVE

N.C. 1914. A remainder to testator’s daughter during her natural life and at her death to her “nearest blood relative” vested in her but a life estate; the words “nearest blood relative” not being synonymous with “heirs,” so as to pass a fee under the rule in *Shelley’s Case*.—*Miller v. Harding*, 83 S.E. 25, 167 N.C. 53.—Wills 608(3.1).

NEAREST CIRCUIT JUDGE

Ala.Crim.App. 1995. For purposes of statute providing that when nearest circuit court judge failed to rule on habeas corpus petition within five days from return date, it may be addressed to any other circuit court judge, “nearest circuit judge” does not have to be residing in county nearest to where petitioner is incarcerated. Code 1975, § 15–21–7(a).—*Miller v. State*, 668 So.2d 912.—Hab Cor 467.

NEAREST COMPARABLE OUTLET

Em.App. 1983. In determining “nearest comparable outlet” used to prove maximum price allowable under the Emergency Petroleum Allocation Act, identity of seller is only one factor to be considered, along with other factors, including outlet’s location, its size, and services it offers. Emergency Petroleum Allocation Act of 1973, § 5(a)(3)(B), as amended, 15 U.S.C.A. § 754(a)(3)(B).—*U.S. v. Heller*, 726 F.2d 756.—War 170.

NEAREST COUNTY

Tex.Civ.App.—Austin 1958. Under statute providing that if railroad does not operate railway or maintain agent in county in which plaintiff resided at time of injury, action against railroad for such injury shall be brought either in county in which injury occurred or in county nearest that in which plaintiff resided at time of injury, the “nearest county” is the county in which the courthouse is nearest to courthouse of the county in which plaintiff resided when injured. *Vernon’s Ann.Civ.St.*

art. 1995, subd. 25.—Texas & N. O. R. Co. v. Bradley, 319 S.W.2d 122, writ dismissed.—R R 343.

Tex.Civ.App.—Beaumont 1941. Under statute providing that, if a railroad does not operate its railway or maintain agent in county in which plaintiff resided at time of injury, action shall be brought either in the county in which injury occurred or in county nearest that in which plaintiff resided at time of injury, in which the railroad operates its road or has an agent, “nearest county”, considered in light of general statutes designating county to which venue should be changed in civil and criminal cases, means the county, the courthouse of which is nearest to courthouse of the county in which plaintiff resided at time suit was filed, since courthouse is the place designated by law as the locus of litigation. Code Cr.Proc.1925, art. 565; Rev.St. 1925, arts. 1995, subd. 25, 2172.—*Burlington-Rock Island R. Co. v. Garlitz*, 151 S.W.2d 889.—R R 22(3).

Tex.Civ.App.—Beaumont 1941. Where railroad did not operate line or maintain an agent in Liberty county in which passenger resided at time of injury, but did maintain a line in Montgomery and Harris counties which adjoined Liberty county, and the Harris county courthouse was 43½ miles from the Liberty county courthouse and the Montgomery county courthouse was 57 miles distant over the nearest practical routes between the places, passenger’s action for injuries should have been transferred to Harris county, which was the “nearest county” to Liberty county for venue purposes within the railroad venue statute. Rev.St.1925, art. 1995, subd. 25.—*Burlington-Rock Island R. Co. v. Garlitz*, 151 S.W.2d 889.—Venue 74.

NEAREST COURT

Mont. 1914. Under Rev.Codes, § 6507, providing that a cause which must be transferred must be transferred to the “nearest court,” and Laws 1909, c. 114, providing that if a cause for a change of venue is disqualification of the judge, the case shall be transferred to a district judge of another judicial district, where a change of venue is required because the judge was disqualified by the filing of a disqualifying affidavit, the cause must be transferred to the nearest district court of another judicial district, as determined by the shortest route in the usual mode of travel.—*State v. District Court of Twelfth Judicial Dist. in and for Blaine County*, 141 P. 659, 49 Mont. 247.

NEAREST ENTRANCE

N.Y.Sup. 1900. Within the meaning of the statute which prohibits the establishment of a saloon within 200 feet of the nearest entrance to a dwelling house without the consent of the owner of such house, the “nearest entrance” is the one nearest such saloon, whether in the front, side, or rear of the dwelling. The distance is one arbitrarily fixed, and was intended for the protection of houses. A saloon in the rear of a dwelling might be as obnoxious as one in the front.—*In re Veeder*, 65 N.Y.S. 517, 31 Misc. 569.

NEAREST FRIEND AVAILABLE

Wis. 1942. Evidence sustained finding of judge of the county court that social worker, who signed application for judicial inquiry to determine the mental condition of one alleged to be feeble-minded, was the "nearest friend available" within meaning of statute requiring such application to be made by three citizens, one of whom is to be the nearest relative or friend available, notwithstanding alleged incompetent's mother, aunt, and uncle were residents of the county and present at the hearing, but apparently reluctant to initiate such proceeding. St.1939, §§ 51.01(1), 52.02(1).—In re Terrill, 2 N.W.2d 847, 240 Wis. 53.—Guard & W 13(4); Mental H 135.

NEAREST HEIRS

N.Y.Sur. 1946. Under will devising remainder of testator's estate to "nearest heirs" surviving life tenant; quoted words referred only to those nearest in point of consanguinity, and hence will vested realty devised in testator's nieces to exclusion of his grandniece.—In re Dicks' Will, 66 N.Y.S.2d 264, 187 Misc. 1075.—Wills 506(1).

N.C. 1948. Devise of realty to devisee for his natural life and at his death to his "nearest heirs" gave the devisee fee simple title under the rule in Shelley's Case, the words "nearest heirs" denoting an indefinite succession of lineal descendants who were to take by inheritance.—Ratley v. Oliver, 47 S.E.2d 703, 229 N.C. 120.—Wills 608(3.1).

N.C. 1930. Persons on whom law casts inheritance are "nearest heirs," hence, at least in absence of contrary intention, are same as heirs.—Cox v. Heath, 152 S.E. 388, 198 N.C. 503.—Wills 506(1).

N.C. 1930. Heirs of two deceased brothers of testator shared equally with his two sisters in property devised to his "nearest heirs."—Cox v. Heath, 152 S.E. 388, 198 N.C. 503.—Wills 531(2).

N.C.App. 1985. As used in will, "nearest heirs" is technical phrase synonymous with "heirs," denoting indefinite succession of lineal descendants who are to take by inheritance.—Rawls v. Rideout, 328 S.E.2d 783, 74 N.C.App. 368.—Wills 506(1).

Va. 1920. A testator, after numerous specific gifts, provided that the balance of his estate should be divided equally between "all my then living nearest heirs." Testator left a brother, seven nephews and nieces, children of a deceased brother and sister, and great nephews and nieces. Held: That the words "nearest heirs" were not synonymous with the words "nearest of kin" and that the brother did not take to the exclusion of the other relatives but the testator, by the use of the words "then living nearest heirs," intended that group or collection of his kin upon whom the law would cast the inheritance in case of intestacy.—Kello v. Kello's Ex'rs, 103 S.E. 633, 127 Va. 368, 11 A.L.R. 322.—Wills 506(1).

Va. 1920. Where testator, after making numerous bequests, bequeathed the residue of his estate to be divided equally among his nearest heirs and it appeared that he left a brother, nieces and neph-

ews, the children of deceased brother and sisters, as well as a great-niece and great-nephews, etc., held, that "nearest heirs" will not be construed as meaning nearest in blood or as nearest of kin and giving the entire residue to the brother, but will be deemed as meaning those persons entitled to take under the statute of descents regarded in law as nearest heirs, and hence the estate should be divided among the brother, nieces, etc.—Kello v. Kello's Ex'rs, 103 S.E. 633, 127 Va. 368, 11 A.L.R. 322.—Wills 506(2).

NEAREST HEIRS (RELATIVES)

N.C.App. 1985. In interpreting provision of will stating that testatrix devised property to husband for life and stating that "then said property shall pass to my nearest (relatives) heirs," Court of Appeals would, for greater clarity, transpose phrase "nearest (relatives) heirs" to read "nearest heirs (relatives)," and construe those words in their technical sense as indicating intent to leave remainder interest to her heirs, while excluding her life-tenant husband, a nonrelative, from class of remaindermen. G.S. §§ 29-2, 29-14.—Rawls v. Rideout, 328 S.E.2d 783, 74 N.C.App. 368.—Wills 506(1).

NEAREST IN BLOOD

Mass. 1897. "Nearest in blood," as used in reference to the distribution of French spoliation claims, includes those whose relationship to the original sufferer would entitle them to a share in his estate if it was to be divided under the statute of distribution among such of his surviving relatives as are next of kin.—Codman v. Brooks, 46 N.E. 102, 167 Mass. 499.

Va. 1986. In construing a document providing for distribution of trust estate to "nearest living paternal kindred of Grantor," term "kindred" is not a highly technical term whose primary meaning is determined by reference to the statute of descent and distribution, but merely means "nearest in blood." Code 1950, §§ 64.1-1 to 64.1-17; § 64.1-18 (Repealed).—Elmore v. Virginia Nat. Bank, 350 S.E.2d 603, 232 Va. 310.—Trusts 124.

NEAREST JUSTICE OF THE PEACE

Del.Gen.Sess. 1946. Words "nearest justice of the peace" in statute providing that motorists arrested without warrant for violating motor vehicle laws shall be taken before "nearest justice of the peace" means justice whose regular office is nearest place of arrest by shortest usual route of travel. Rev.Code 1935, § 5683(b).—State v. Johnson, 46 A.2d 641, 43 Del. 294, 4 Terry 294.—Autos 349(19).

Del.Gen.Sess. 1946. Justice of the peace did not have jurisdiction of prosecution of motorist for operating motor vehicle while under the influence of intoxicating liquor, where motorist was arrested without a warrant, and justice's office was one or two city blocks further from point of arrest than another justice's office, since he was not the "nearest justice of the peace" within meaning of statute requiring motorist arrested without a warrant to be brought before nearest justice. Rev.Code 1935,

§ 5683(b).—*State v. Johnson*, 46 A.2d 641, 43 Del. 294, 4 Terry 294.—Autos 350.

NEAREST KIN

N.C.App. 1968. Under will creating life estate and devising remainder to life tenant's "nearest kin," the only child of devisee of life estate had a "contingent remainder" and not a "vested remainder," and could not maintain action against grantee of life estate for waste and forfeiture. G.S. § 1-533.—*Edens v. Foulks*, 163 S.E.2d 51, 2 N.C.App. 325.—Remaind 17(2); Wills 634(17).

NEAREST KINDRED

Ala. 1946. The words "next of kin" and "nearest kindred", in construing a will, are synonymous and each means the nearest degree of consanguinity.—*Kimbrough v. Dickinson*, 24 So.2d 424, 247 Ala. 324.—Wills 509.

Mass. 1887. Primarily the words "nearest kindred" indicate the nearest degree of consanguinity, and they are perhaps more frequently used in this sense than in any other.—*Swazey v. Jaques*, 10 N.E. 758, 144 Mass. 135, 59 Am.Rep. 65.

NEAREST LAWFUL HEIRS OF MINE

Mo. 1941. Where testator gave his wife a life estate in his property and provided that at her death one-half of the remainder should go to his adopted daughter and the other half to the "nearest and lawful heirs of mine" and that of my said wife, share and share alike, and the wife subsequently remarried and adopted a son, it was held that such adopted son was entitled to no interest under the testator's will, and further that testator's adopted daughter was not included in the terms "nearest lawful heirs of mine", as those words were used in the will.—*Leeper v. Leeper*, 147 S.W.2d 660, 347 Mo. 442, 133 A.L.R. 586.

NEAREST LIVING PATERNAL KINDRED OF GRANTOR

Va. 1986. In construing a document providing for distribution of trust estate to "nearest living paternal kindred of Grantor," term "kindred" is not a highly technical term whose primary meaning is determined by reference to the statute of descent and distribution, but merely means "nearest in blood." Code 1950, §§ 64.1-1 to 64.1-17; § 64.1-18 (Repealed).—*Elmore v. Virginia Nat. Bank*, 350 S.E.2d 603, 232 Va. 310.—Trusts 124.

NEAREST MALE HEIRS

Pa. 1902. Where there is a remainder to the "nearest male heirs" of the life tenant, it does not properly describe the takers either in fee or tail, and the remainder is therefore to a special class, who take as purchasers.—*Jones v. Jones*, 51 A. 362, 201 Pa. 548.—Wills 495, 608(3.1).

Pa. 1902. A devise to testator's sons during their lives, and at their deaths to their or each of their "nearest male heirs," does not create an estate tail, which, under Act 1855, 68 P.S. § 124, becomes a fee, the devise after the life estate not

being limited to the heirs of the body.—*Jones v. Jones*, 51 A. 362, 201 Pa. 548.—Wills 607(1).

Pa. 1902. A devise to testator's sons during their lives, and at their deaths to their or each of their "nearest male heirs," is not enlarged into a fee under the rule in *Shelley's Case*, as the heirs generally are not to succeed to their interest.—*Jones v. Jones*, 51 A. 362, 201 Pa. 548.—Wills 608(3.1).

NEAREST OF KIN

Conn. 1933. Testator's intention, ascertained from language of will read in light of surrounding circumstances, controls as to meaning of "nearest of kin" as used in will.—*Sherwood v. Hull*, 167 A. 923, 117 Conn. 327.—Wills 509.

Conn. 1933. Only surviving sister of life tenant leaving widow but no children held entitled under will as "nearest of kin" to use of testator's homestead for life; her lineal descendants being entitled to fee as against adopted son of life tenant's deceased sister.—*Sherwood v. Hull*, 167 A. 923, 117 Conn. 327.—Wills 509.

Conn. 1930. Whether "lineal descendants" and "nearest of kin" include adopted child depends on testator's intention, ascertained from will in light of circumstances when executed.—*Appeal of Wildman*, 151 A. 265, 111 Conn. 683.—Adop 21.

Conn. 1930. Words "nearest of kin" will be construed as connoting blood relationship, unless testator intended broader meaning.—*Appeal of Wildman*, 151 A. 265, 111 Conn. 683.—Wills 509.

Conn. 1930. Whether "nearest of kin" includes adopted child depends on testator's intention, ascertained from will in light of circumstances when executed.—*Appeal of Wildman*, 151 A. 265, 111 Conn. 683.—Wills 509.

Conn. 1930. One adopted after testator's death by his daughter held not entitled to her share of estate as her "nearest of kin." Gen.St.1918, § 4879.—*Appeal of Wildman*, 151 A. 265, 111 Conn. 683.—Wills 509.

Ga. 1953. Testamentary direction to executor to deliver residuary estate in equal shares to testator's "nearest of kin" then surviving used quoted phrase as meaning "next of kin", in view of synonymous use of quoted phrases in next provision of will.—*Butts v. Trust Co. of Ga.*, 75 S.E.2d 745, 209 Ga. 787.—Wills 509.

Ga. 1953. Where will bequeathed one-half of residuary estate in trust for named sister with remainder to testator's nearest of kin then surviving and the other one-half to testator's nearest of kin living at time of his death, except that sister should not participate in such bequest, and provided that, should sister predecease testator, executor should deliver the whole of residue of estate in equal shares to testator's "nearest of kin" then surviving, testator intended that, where sister predeceased him, net residue of estate should be distributed among his heirs at law pursuant to statute of distribution, including by representation children of de-

ceased nieces and nephews as well as surviving nieces and nephews. Code, § 113-903, subd. 5.—*Butts v. Trust Co. of Ga.*, 75 S.E.2d 745, 209 Ga. 787.—Wills 509.

Ill. 1954. Phrases “nearest of kin” and “next of kin” are synonymous.—*Williams v. Fulton*, 123 N.E.2d 495, 4 Ill.2d 524.—Wills 509.

Ill. 1954. Where will devised life estate to son “with remainder in fee simple to heirs of his body” and provided that if son should die (as he eventually did) without children or descendants of children, land should descend to his “nearest of kin” according to rules of descent as declared by statute, “nearest of kin” would be deemed to have been used in popular sense as meaning “those who would take under Descent Act of State of Illinois,” and devisee’s widow and half-brother would take as equal tenants in common.—*Williams v. Fulton*, 123 N.E.2d 495, 4 Ill.2d 524.—Wills 509.

Mass. 1898. The words “nearest of kin” in a will mean nearest blood relations, when the context does not imply the contrary.—*Leonard v. Haworth*, 51 N.E. 7, 171 Mass. 496.—Wills 509.

Mass. 1897. The words “nearest of kin” in a will mean nearest blood relations, when the context does not imply the contrary.—*Keniston v. Mayhew*, 47 N.E. 612, 169 Mass. 166.—Wills 509.

Mass. 1887. Primarily the words “nearest of kin” indicate the nearest degree of consanguinity, and they are perhaps more frequently used in this sense than in any other.—*Swazey v. Jaques*, 10 N.E. 758, 144 Mass. 135, 59 Am.Rep. 65.

Mich. 1910. The term “nearest of kin,” in a will, signifies those standing in the nearest relationship to testator, according to the legal rules for computing degrees of kinship; brothers and sisters taking to the exclusion of the children of a deceased brother or sister.—*Clark v. Mack*, 126 N.W. 632, 161 Mich. 545, 28 L.R.A.N.S. 479.—Wills 509.

N.J.Ch. 1933. Words “nearest of kin” as used in testamentary gift, and as qualified by phrase “under laws of state,” means class nearest in blood.—*Guarantee Trust Co. v. Miller*, 164 A. 859, 112 N.J.Eq. 493, affirmed 170 A. 615, 115 N.J.Eq. 295.—Wills 509.

N.Y. 1949. “Nearest of kin” in bequest of remainder in trust meant “next of kin” calling for distribution in accordance with statute, and bequest was payable to brothers and sisters living and descendants in whatever degree of those dead, but did not include a surviving spouse of a deceased brother. Decedent Estate Law, §§ 47-c, 83, subd. 6.—*In re Burk’s Will*, 86 N.E.2d 759, 299 N.Y. 308.—Wills 509.

N.Y. 1949. The words “nearest of kin”, in will bequeathing estate to executor in trust to pay income to testator’s widow for life and directing executor at death of testator’s widow to pay and distribute one-half of estate to testator’s nearest of kin in equal shares and one-half to widow’s “nearest of kin” in equal shares, meant “next of kin”, and called for distribution in accordance with the

statute. Decedent’s Estate Law, §§ 47-c, 83.—*In re Burk’s Will*, 84 N.E.2d 631, 298 N.Y. 450, reargument denied, remittitur amended 86 N.E.2d 759, 299 N.Y. 308, amended 88 N.E.2d 725, 300 N.Y. 498.—Wills 509.

N.Y.Sur. 1956. Where gift of one-half of remainder was made to be equally divided among “nearest of kin” of testatrix, as of date of death of life tenant, and at time of vesting of remainder, there existed a niece, grandnieces and grandnephews, and great-grandniece, and great-grandnephews, distribution of remainder would be made among all such heirs as if testatrix had expressly provided for per stirpes distribution among her next of kin as of date of life tenant.—*In re Butts’ Will*, 148 N.Y.S.2d 435, 4 Misc.2d 430.—Wills 524(6.1), 529.

N.Y.Sur. 1947. One does not have “distributees”, “heirs”, “next of kin”, or “nearest of kin” for the purpose of property distribution until after death.—*In re Burk’s Will*, 76 N.Y.S.2d 166, 190 Misc. 931, modified 79 N.Y.S.2d 437, 273 A.D. 1012, reversed 84 N.E.2d 631, 298 N.Y. 450, reargument denied, remittitur amended 86 N.E.2d 759, 299 N.Y. 308, amended 88 N.E.2d 725, 300 N.Y. 498.—Wills 524(2).

N.Y.Sur. 1947. Under will bequeathing estate to executor in trust to pay income to testator’s widow for life and directing executor at death of testator’s widow to pay and distribute one-half of estate to testator’s nearest of kin in equal shares and one-half to widow’s nearest of kin in equal shares, the words “nearest of kin” meant “next of kin” and the words in “equal shares” indicated equality among stocks. Decedent Estate Law, § 47-c.—*In re Burk’s Will*, 76 N.Y.S.2d 166, 190 Misc. 931, modified 79 N.Y.S.2d 437, 273 A.D. 1012, reversed 84 N.E.2d 631, 298 N.Y. 450, reargument denied, remittitur amended 86 N.E.2d 759, 299 N.Y. 308, amended 88 N.E.2d 725, 300 N.Y. 498.—Wills 509, 529.

Ohio 1919. The phrase “nearest of kin,” when employed in a last will, in the absence of language therein manifesting a different intention, is to be construed to embrace such as would inherit under the statutes of descent and distribution and in the order and portion therein provided.—*Godfrey v. Eppe*, 126 N.E. 886, 17 Ohio Law Rep. 379, 17 Ohio Law Rep. 482, 100 Ohio St. 447, 11 A.L.R. 317.—Wills 509.

Pa.Super. 1952. The expression “nearest of kin” is generally regarded as tantamount to “next of kin”.—*In re Shippen’s Estate*, 85 A.2d 887, 170 Pa.Super. 405.—Wills 509.

Pa.Super. 1952. Where will directed that if life tenant of trust estate should die without issue, then such trust estate should descend to testator’s nearest of kin living, according to laws of state of Pennsylvania and testator died prior to enactment of statute providing that in absence of contrary intent appearing in will, “next of kin” shall mean those persons who take under intestate laws, in absence of manifestation that testator’s intention was otherwise, meaning of “nearest of kin” was that

property went to nearest of testator's blood relations in equal degree of consanguinity to exclusion of those more remote in degree. 20 P.S. §§ 180.14(4), 180.22.—*In re Shippen's Estate*, 85 A.2d 887, 170 Pa.Super. 405.—Wills 509.

Tex.Civ.App.—Dallas 1948. The words "next of kin" or "nearest of kin" as used in a will are more or less synonymous with "lawful heirs" under the law of descent and distribution and where it can be fairly gathered from joint will that testators intended property to go according to laws of inheritance, use of the words "equally divided" in the same connection does not manifest a purpose to modify such statutory distribution.—*Dickerson v. Yarbrough*, 212 S.W.2d 975.—Wills 509.

NEAREST RELATION

Del.Ch. 1930. Singular expression, "nearest relation," as used in will, would be construed to include plural even without aid of contextual phrase, "share and share alike."—*Hearn v. Hastings*, 152 A. 129, 17 Del.Ch. 229.—Wills 466.

La. 1953. Daughter born in lawful wedlock to mother of illegitimate son, who died intestate without surviving ascendants or descendants, was not his "nearest relation," "legal heir," or "heir of the blood" within meaning of Civil Code provisions relating to legal successions, even if deceased had been legally acknowledged by mother, and hence could not inherit deceased half-brother's separate estate as his "sister" to exclusion of surviving widow. LSA—C.C. arts. 238, 875–879, 912, 924.—*Succession of Wesley*, 69 So.2d 8, 224 La. 182.—Child 89.

Okla. 1918. Lands allotted, under the provisions of section 28 of an Act of Congress of March 1, 1901, 31 Stat. 870, c. 676, in the name of a Creek citizen who died intestate and without issue before receiving his allotment, descend to his heirs according to the law of descent and distribution of the Creek Nation; and, where both parents are alive at the time of descent cast, are inherited by the mother as the "nearest relation," to the exclusion of the father.—*Renfro v. Olentine*, 178 P. 119, 72 Okla. 63, 1918 OK 731, certiorari denied 39 S.Ct. 389, 249 U.S. 614, 63 L.Ed. 803.

Okla. 1914. Where, on August 16, 1899, a duly enrolled citizen of the Creek Nation died at the age of two years, before receiving her allotment, leaving her surviving a father and a sister, born not of the father but of the same mother, all citizens of the Creek Nation, held, the Creek law of descent and distribution governed the devolution of the allotment, as directed by section 28 of the Original Agreement, 31 Stat. 870, ratified May 25, 1901, and that the father as the "nearest relation" inherited the land in fee to the exclusion of the half-sister.—*Scott v. Jacobs*, 140 P. 148, 40 Okla. 522, 1914 OK 156.

Okla. 1908. Where a citizen of the Creek Nation, by the Commission to the Five Civilized Tribes duly enrolled a Creek freedman, who on April 22, 1899, had selected her allotment on the public domain of that nation and received her certificate

therefor, died June 7, 1902, intestate, without a child, or issue thereof, her surviving, but leaving her surviving an intermarried noncitizen father and an intermarried noncitizen husband, a mother, three sisters and a brother, all citizens of the Creek Nation, her mother as her "nearest relation" was entitled to inherit an undivided one-half interest in her allotment under the laws of descent and distribution of the Creek Nation, Act March 1, 1901, § 6, c. 676, 31 Stat. 863, and the intermarried noncitizen husband of intestate the remaining one-half interest, under Comp.Laws of the Creek Nation, c. 10, § 8, construed with article 3, § 1.—*De Graffenreid v. Iowa Land & Trust Co.*, 95 P. 624, 20 Okla. 687, 1908 OK 49.—Indians 18.

NEAREST RELATIONS

N.J.Ch. 1888. A gift to the testator's "nearest relations" means brothers, to the exclusion of nephews and nieces.—*Locke v. Locke*, 16 A. 49, 45 N.J.Eq. 97.—Wills 502.

NEAREST RELATIVE

Ga. 1947. Wife is "nearest relative" of incompetent within contemplation of statute requiring notice of guardianship proceeding upon nearest relative of incompetent. Code, § 49–604.—*Phillips v. Phillips*, 44 S.E.2d 767, 202 Ga. 776.—Mental H 129.

Ga. 1947. Where wife of alleged incompetent was guilty of infidelity and incarcerated in state prison statutory ten days' notice of institution of guardianship proceedings made upon alleged incompetent's two brothers and sister was sufficient to satisfy statute requiring notice to be given to "nearest relative" notwithstanding wife being the nearest relative was not given notice. Code, § 49–604.—*Phillips v. Phillips*, 44 S.E.2d 767, 202 Ga. 776.—Mental H 129.

NEAREST RELATIVE AVAILABLE

App.D.C. 1946. Under statute authorizing "nearest relative available" to file petition for writ of de lunatico inquirendo and for appointment of committee, the quoted phrase is an elastic term, and is not intended to require an aged relative, who might make himself available, if no one else were available, to bear the burden of starting a proceeding, but it is intended to exclude officious intermeddling. D.C.Code 1940, § 21–310.—*Duvall v. Humphrey*, 153 F.2d 798, 80 U.S.App.D.C. 403.—Mental H 124.

App.D.C. 1946. Niece was "nearest relative available" entitled to file petition for writ of de lunatico inquirendo and for appointment of committee for aunt, where her 81 year old brother and her 84 year old sister joined with other relatives in requesting appointment of a committee. D.C.Code 1940, § 21–310.—*Duvall v. Humphrey*, 153 F.2d 798, 80 U.S.App.D.C. 403.—Mental H 124.

NEAREST RELATIVES

N.C.App. 1985. As used in will, "nearest relatives" signifies extremely limited class of nearest

blood relations, thereby excluding those persons related by marriage and prohibiting principle of representation, unless there is evidence in will of testatrix' intent to avoid technical meaning.—*Rawls v. Rideout*, 328 S.E.2d 783, 74 N.C.App. 368.—*Wills* 502.

Tex.Civ.App.—Eastland 1944. The words “nearest relatives”, as used in provision in holographic will directing that “what property I possess is to be divided equally between my brothers and sisters if they are living If not my nearest relatives their children,” would be construed as meaning “children” of deceased brothers and sisters.—*Peebles v. Briggs*, 184 S.W.2d 706, reversed 188 S.W.2d 147, 144 Tex. 47.—*Wills* 502.

NEAREST (RELATIVES) HEIRS

N.C.App. 1985. In interpreting provision of will stating that testatrix devised property to husband for life and stating that “then said property shall pass to my nearest (relatives) heirs,” Court of Appeals would, for greater clarity, transpose phrase “nearest (relatives) heirs” to read “nearest heirs (relatives),” and construe those words in their technical sense as indicating intent to leave remainder interest to her heirs, while excluding her life-tenant husband, a nonrelative, from class of remaindermen. G.S. §§ 29-2, 29-14.—*Rawls v. Rideout*, 328 S.E.2d 783, 74 N.C.App. 368.—*Wills* 506(1).

NEAREST ROUTE

N.D. 1919. The words “nearest route,” as used in Laws 1911, c. 266, § 232, subd. 4, as amended by Laws 1913, c. 267, and Comp. Laws 1913, § 1342, as amended and re-enacted by Laws 1915, c. 141, relating to transportation of pupils living a certain distance from schools by the nearest route, mean the nearest public route or one which has been duly authorized or exists by law.—*Eastgate v. Osago School Dist. of Nelson County*, 171 N.W. 96, 41 N.D. 518.—*Schools* 159.5(1).

NEAREST TO COUNTY

Ga. 1932. Allegation that newspaper was nearest county line in miles did not show it was “nearest to county,” within statute regarding publication of legal advertisement. Civ.Code 1910, § 6062.—*Carter v. Land*, 164 S.E. 205, 174 Ga. 811.—*Newsp* 3(3).

NEAR FUTURE

Mo.App. 1968. It is implicit in approved instruction defining fair market value that term “near future” is a period of time beginning immediately after the taking and it is not inconsistent with approved instruction which should be given when part of property is taken. MAI Nos. 9.02, 15.01.—*State ex rel. Kansas City Power & Light Co. v. Campbell*, 433 S.W.2d 606.—*Em Dom* 222(4).

NEARLY

Ala. 1888. In a complaint alleging that plaintiff was injured while attempting to descend the steps when the train was “about arriving,” means “near-

ly,” “not far from,” the arrival of the train, and does not imply that the time had come when it was reasonably or apparently necessary that plaintiff should descend from the platform and place himself in readiness to enter a car without undue haste, and did not sufficiently aver that the time had arrived when it became the duty of the railroad company to have the depot lighted, failure to do which was the negligence complained of in the action.—*Alabama G.S.R. Co. v. Arnold*, 4 So. 359, 84 Ala. 159, 5 Am.St.Rep. 354.

Cal. 1870. In an action against the directors of a corporation, an averment in the complaint that the board is composed “nearly,” if not entirely, of the same persons who committed the wrong complained of, lacks sufficient precision to present an issuable fact, the court remarking that the term “nearly” is purely relative, and does not define with accuracy how many of the defendants are members of the present board of directors, and is not equivalent to an averment that the defendants compose even a majority of the present board.—*Cogswell v. Bull*, 39 Cal. 320.

Cal.App. 3 Dist. 1905. The word “about” is frequently used as a synonym for the word “nearly” or “approximately”; and such use is sanctioned by definitions found in the various standard dictionaries. Understood in this sense, it cannot be said that a charge in an information that defendant stole “about \$80 lawful money of the United States of America” rendered the information demurrable for uncertainty.—*People v. Peltin*, 82 P. 980, 1 Cal. App. 612.

Ga. 1976. Where evidence had demonstrated that life tenant was in possession of property which was covered by tax deed in 1923, affidavits which stated that his family had moved “in about 1924” were insufficient to show that the life tenant had moved from the land during 1924 and that purchaser of the tax deed which resulted from nonpayment of 1924 taxes thus did not obtain the entire estate; the word “about” is of somewhat flexible significance which may vary with circumstances; generally, it means “nearly,” “approximately,” and “in close correspondence to,” or “within a short time.”—*Pannell v. Moore*, 229 S.E.2d 603, 237 Ga. 761.—*Tax* 810(3).

Ga. 1905. The meaning of the adverb “about” is “nearly,” “approximately,” “with close correspondence in quality, * * * degree,” etc.—*Nelms v. State*, 51 S.E. 588, 123 Ga. 575.

Ill. 1938. In action for death of pedestrian from injuries sustained when struck by truck which skidded onto sidewalk in avoiding collision with milk wagon, instruction that recovery from dairy company was authorized if driver of milk wagon caused or “proximately” contributed to cause the injury and death, was not subject to the objection that jury may have understood the word “proximately” to mean “nearly.” S.H.A. ch. 70, § 1 et seq.—*Metropolitan Trust Co. v. Bowman Dairy Co.*, 15 N.E.2d 838, 369 Ill. 222.—*Autos* 246(22).

Ill. 1928. Husband and wife, makers of joint will, dying within day and half of each other, held

to have died at approximately same time within meaning of provision of will, and refusal to probate will as will of husband dying last was error; 'simultaneously,' 'approximately,' 'nearly,' 'about,' 'close to.' Where husband and wife executed a joint will, leaving the property of each unto the other, and in a later section provided that, in the event that the the makers' death should occur 'simultaneously, or approximately so, or in the same common accident or calamity, or under circumstances causing doubt as to which' survived the other, the property should be placed in trust for their adopted son, and, where makers' both ill at the same time died within a day and a half of each other, the husband last, *held* that their death had occurred at approximately the same time, and that refusal to probate the will as the will of husband dying last was error; 'Simultaneously' meaning at precisely the same instant, 'approximately' meaning "nearly," 'about,' 'close to,' all of such words being elastic and not indicative of certainty in time.—*American Trust & Safe Deposit Co. v. Eckhardt*, 162 N.E. 843, 331 Ill. 261.—*Wills* 208.

Iowa 1896. Code 1873, § 2019, I.C.A. § 563.1, relating to party walls, and providing that he who is "about" to build contiguous to the land of his neighbor, etc., does not mean merely intends to build, since "about" is defined as "nearly," "approximately," "almost," so that an allegation that plaintiff intends to build the wall does not bring the pleading within the statute.—*Switzer v. Davis*, 66 N.W. 174, 97 Iowa 266.

Mo. 1973. The word "substantially," as used in statute providing that whenever assessed valuation of property within county has been increased by ten percent or more the taxing authorities shall revise rates to extent necessary to produce substantially the same amount of taxes as previously estimated to be produced by the original levy is synonymous with "practically," "nearly," "almost," "essentially" and "virtually." Sections 137.073, 151.150 RSMo 1969, V.A.M.S.—*St. Louis-Southwestern Ry. Co. v. Cooper*, 496 S.W.2d 836.—*Tax* 305.

Mo.App. 1942. The qualifying word "about" is a synonym for word "nearly".—*Odum v. Langston*, 170 S.W.2d 589, 237 Mo.App. 721, transferred to Mo.S.Ct. 173 S.W.2d 826, 351 Mo. 609.

N.Y.Sup. 1896. "About" means "nearly," "approximately," "almost," and where plaintiff, in an action for the loss of baggage, alleged the value of the articles as being "about" a certain sum, he is limited to such sum in his recovery.—*Simpson v. New York, N.H. & H.R. Co.*, 73 N.Y.St.Rep. 812, 38 N.Y.S. 341, 16 Misc. 613.

Or. 1902. The word "approximately" simply means "nearly" or "closely"; so that in an action for damages for trespassing stock, where plaintiff had been prevented from completing the partition fence, an instruction that if the defendants prevented plaintiff from building the fence on the line, or approximately so, was erroneous, as permitting the building of the fence on defendants' land.—*Oliver v. Hutchinson*, 69 P. 139, 41 Or. 443, rehearing denied 69 P. 1024, 41 Or. 443.

Or. 1897. "About" signifies "nearly," "approximately," "in the neighborhood of," so that a petition for a road, stating that the place of beginning is "about" 150 yards from the dwelling, is equivalent to saying it is approximately 150 yards, and hence is not sufficiently definite to comply with Hill's Ann. Laws Or. § 4062, requiring a petition to specify the place of beginning.—*Sime v. Spencer*, 47 P. 919, 30 Or. 340.

Wash. 1968. Words "substantially", "about", "essentially" and "nearly" are employed to modify terms intended to be close approximations and, as such, their existence in writing does not make the writing too indefinite to evidence a contract.—*Janzen v. Phillips*, 437 P.2d 189, 73 Wash.2d 174.—*Contracts* 9(1).

NEARLY CORRESPONDING

Me. 1923. In an action to recover realty as against the holder under a tax deed, evidence consisting of a certificate of publication of the advertisement of sale in a certain paper, and of a "similar" advertisement in the state paper held insufficient to show compliance with Rev.St.1903, c. 9, § 60, requiring notice of time and place of sale to be published in the state paper, and some paper printed in the county where the land lies, the word "similar" having either the meaning of "exactly corresponding" or "nearly corresponding," and the certificate not showing which meaning was intended.—*Stowell v. Blanchard*, 119 A. 866, 122 Me. 368.—*Tax* 810(3).

NEARNESS IN PLACE OR TIME

N.C. 1891. "At" is defined by Webster to express "primarily," "nearness in place or time." "At" the house may be "in" or "near" the house and authority to connect with the railroad at the most practicable point "at" a certain city is not transgressed when the most practicable point is half a mile from the city limits.—*Purifoy v. Richmond & D.R. Co.*, 12 S.E. 741, 108 N.C. 100.

NEAR OR DEAR

N.Y.Sur. 1929. Uncles and aunts are not presumed to be "near or dear" collaterals, who would have heard from absentee, if living, in determining death by seven years' absence. Civil Practice Act, § 341.—*In re Wyllie's Estate*, 236 N.Y.S. 370, 134 Misc. 715.—*Death* 2(1).

NEAR OR UPON

Colo. 1915. Under the evidence, held error to instruct that defendant was liable if its motorman negligently failed to stop after he discovered, or with reasonable care could have discovered, plaintiff "near or upon" the track.—*Colorado Springs & Interurban R. Co. v. Engle*, 147 P. 666, 58 Colo. 352.—*Trial* 252(9).

NEAR-PERMANENCY TEST

Ill.App. 4 Dist. 1993. Independent basis for enforcement of covenant not to compete exists under "near-permanency test"; two-prong test is satisfied

as to customer list when: employer's relationship with customers is near permanent, and, but for association with employer, employee would not have had contact with customers.—*Springfield Rare Coin Galleries, Inc. v. Mileham*, 189 Ill.Dec. 511, 620 N.E.2d 479, 250 Ill.App.3d 922.—Contracts 118.

Ill.App. 4 Dist. 1993. Where employer is engaged in provision of professional services and employs employee to assist in provision of services, and evidence indicates that employee would not have had contact with clients but for association with employer, "near-permanency test" for enforceability of covenant not to compete is satisfied; however, when evidence indicates that client utilizes several providers in same type of professional services simultaneously, near-permanency test will not be satisfied, even though employee is engaged in professional services.—*Springfield Rare Coin Galleries, Inc. v. Mileham*, 189 Ill.Dec. 511, 620 N.E.2d 479, 250 Ill.App.3d 922.—Contracts 118, 141(3).

Ill.App. 4 Dist. 1993. When employer's business is sale of nonunique product, and when its customers also do business with its competitors, are generally known to competitors, or are ascertainable by reference to telephone or other specialized directories, "near-permanency test" for enforceability of covenant not to compete with employee will not be satisfied.—*Springfield Rare Coin Galleries, Inc. v. Mileham*, 189 Ill.Dec. 511, 620 N.E.2d 479, 250 Ill.App.3d 922.—Contracts 118.

Ill.App. 4 Dist. 1993. While seven factor list for determining whether "near-permanency test" for enforceability of covenant not to compete has been satisfied may be helpful in some cases, it need not be applied in all cases; when given business falls squarely within one of two categories of cases previously recognized, determination may be made without resorting to factors, but when business is lacking some of characteristics of a category, has characteristics inconsistent with category in which it would otherwise be placed, or for some reason does not fall squarely within one of two categories, factors may be helpful in determining whether test has been met.—*Springfield Rare Coin Galleries, Inc. v. Mileham*, 189 Ill.Dec. 511, 620 N.E.2d 479, 250 Ill.App.3d 922.—Contracts 118.

Ill.App. 4 Dist. 1993. Coin dealer business fell squarely within "sales category," as opposed to "professional service", and thus did not satisfy "near-permanency test" for enforceability of covenant not to compete; dealer bought coins and metals such as scrap gold from small dealers at low prices and sold them to large dealers at higher price, dealer was not exclusive supplier, and three dealers who began to do business with dealer through employee testified that they did not do any business with dealer prior to being contacted by employee.—*Springfield Rare Coin Galleries, Inc. v. Mileham*, 189 Ill.Dec. 511, 620 N.E.2d 479, 250 Ill.App.3d 922.—Contracts 118.

NEAR-PERMANENT CUSTOMER BASE

Fla.App. 2 Dist. 1992. "Near-permanent customer base" entitling employer to enforce restrictive covenant in Illinois exists if employer can demonstrate that employer had longstanding relationship with its customers, employer exceeded traditional bounds of salesmen responsibility to develop its customer base, and employee would not have had contact with customer but for his relationship with employer.—*Punzi v. Shaker Advertising Agency, Inc.*, 601 So.2d 599.—Contracts 118.

NEAR-PERMANENT RELATIONSHIP

Ill.App. 4 Dist. 1993. "Near-permanent relationship," providing independent basis for enforcement of covenant not to compete, is inherent in provision of professional services, but is generally absent from business engaged in sale; moreover, relationship is not generally present when business does not engender customer loyalty by providing unique product or personal service, and when customers of business utilize many suppliers simultaneously to meet their needs.—*Springfield Rare Coin Galleries, Inc. v. Mileham*, 189 Ill.Dec. 511, 620 N.E.2d 479, 250 Ill.App.3d 922.—Contracts 118.

NEAR-PRIVITY TEST

Mass. 1998. Under "near-privity test," which limits accountant's liability exposure for negligence in financial report to those with whom accountant is in privity or in relationship sufficiently approaching privity, accountant may be held liable to noncontractual third parties who rely to their detriment on inaccurate financial report if accountant was aware that report was to be used for particular purpose, in furtherance of which known party (or parties) was intended to rely, and if there was some conduct on part of accountant creating link to that party, which evinced accountant's understanding of party's reliance.—*Nycal Corp. v. KPMG Peat Marwick LLP.*, 688 N.E.2d 1368, 426 Mass. 491.—Accnts 9.

NEAR RELATIVES

La.App. 3 Cir. 1996. Adult sons of decedent had right of action for distress sustained as result of alleged disturbance of their father's remains; adult sons fell within category of "near relatives" who might bring such suit in addition to surviving spouse. LSA-R.S. 8:655.—*Sharp v. Noble Drilling Corp.*, 685 So.2d 608, 1996-622 (La.App. 3 Cir. 12/18/96).—Dead Bodies 9.

N.J.Ch. 1891. The term "near relatives," in a will, held to mean next of kin.—*Cox v. Wills*, 22 A. 794, 49 N.J.Eq. 130, reversed 25 A. 938, 49 N.J.Eq. 573.

Wis. 1905. The words "near relatives," as used in petition to appeal after statutory time from decision admitting will to probate may reasonably be considered as synonymous with "next of kin."—*In re Scaife's Will*, 105 N.W. 920, 126 Wis. 405.—Wills 364.

NEAR THE PLACE

U.S.Okla. 1926. "Near the place" means vicinity, locality or neighborhood. These expressions are elastic and dependent upon circumstances, and may be equally satisfied by areas measured by rods or miles.—*Connally v. General Const. Co.*, 46 S.Ct. 126, 269 U.S. 385, 70 L.Ed. 322.

Okla.Crim.App. 1922. Rev.St.1910, § 3757, fixing hours of labor on public work and requiring compensation to conform to the wages paid for like labor in that locality, held not void for want of uncertainty, the word "locality" being used as an equivalent to "place," "near the place," "vicinity" or "neighborhood." Citing *Words & Phrases*, 2d Series, vol. 3, 587.—*State v. Tibbetts*, 205 P. 776, 21 Okla.Crim. 168.—Statut 47.

NEAR THE RIVER BANK

Tex.Civ.App.—El Paso 1919. The words, "near the river bank," as used in field notes locating the corner of a survey, mean the same as "on the river bank" (citing *Words and Phrases*, First and Second Series, Near).—*Burkett v. Chestnutt*, 212 S.W. 271.—Bound 14.

NEAR TO

Cal. 1910. A deed described the land as lot 10, of block V of the Mott tract, "the same being the lot on the corner of First street on the east side of F. street, being 65 feet front by 165 feet deep." A map of the Mott tract showed lot 10 of Block V, as a lot fronting 60 feet on F. street with a depth of 165 feet, and as located 60 feet from First street, and lot 9 of the same dimensions lying between it and First street, and fronting on F. street. Held, that the quoted words did not render the description uncertain as inconsistent with the other description, for the word "on" in the quoted description might be construed as equivalent to "near to" or "at," as simply denoting proximity.—*Hall v. Bartlett*, 112 P. 176, 158 Cal. 638.—*Deeds* 38(2).

Cal.App. 3 Dist. 1970. Term "adjacent" as used in education code section providing for distribution of 15% of forest reserve funds to all school districts in county and requiring apportionment of remainder of funds to school districts within or "adjacent to" forest reserve does not necessarily mean "contiguous" and may mean "neighboring" or "near to" or "close by". *West's Ann.Education Code*, § 20251.—*Oro Madre Unified Sch. Dist. v. Amador County Bd. of Education*, 87 Cal.Rptr. 250, 8 Cal. App.3d 408.—*Woods* 8.

Cal.App. 5 Dist. 1966. The word "adjacent" as used in statute respecting appropriation of county's share of forest reserve school funds to districts adjacent to national forests does not mean "contiguous" or "touching" or "adjoining", but rather "neighboring" or "near to" or "close by". *West's Ann.Education Code*, § 20251.—*Sonora Elementary School Dist. v. Tuolumne County Bd. of Ed.*, 49 Cal.Rptr. 153, 239 Cal.App.2d 824.—*Schools* 19(1); *Woods* 8.

Iowa 1917. The word "upon" ordinarily means the same as "on," but this may mean "as soon as"

or "near to" or "at the time of."—*Rolfs v. Mullins*, 163 N.W. 232, 180 Iowa 472.

Ky. 1926. Under tariff filed by railroad, providing that where passenger takes train at point where no ticket office is maintained 10-cent excess was not to be collected, held, that a ticket office, located across the river and one-eighth of a mile from point where passenger boarded train was not "at" such point within meaning of tariff, and ejection of passenger for refusal to pay 10-cent excess was unlawful; "at" primarily meaning "near to," and involves idea of proximity.—*Chesapeake & O. Ry. Co. v. Hill*, 284 S.W. 1047, 215 Ky. 222, 48 A.L.R. 327.

La. 1916. The term "adjacent to" is not restricted to the meaning "abutting," "adjoining," "contiguous to," or "bordering upon." It has been held to mean "lying close by," "near to," or "in the neighborhood or vicinity of." Therefore, when the contractor and the engineer of the levee board in charge of the work of building of levee construe the expression in the contract "adjacent battures" to include the batture extending beyond the end of the levee, the contract should be carried out accordingly.—*Reynolds v. Board of Com'rs of Orleans Levee Dist.*, 71 So. 787, 139 La. 518.

Md. 1921. Where a contract for the sale of stockings provided that "Delivery dates mentioned are approximate only," it could not be said, as a matter of law, in view of the shortage of labor and materials conceded by both parties, that a delay of 49 days in delivery warranted cancellation and refusal to accept; the word "approximate" meaning, literally, "near to," and in ordinary usage being equivalent to "about," "a little more or less," "close," and its use excluding the idea of definiteness and exactness.—*Kleiman v. Orion Knitting Mills*, 115 A. 857, 139 Md. 550.—*Sales* 182(1).

Vt. 1910. Where the Public Service Commission required the construction of a baggage room and platform "adjacent" to a team track at a junction point, the order did not require that the baggage room and platform be constructed "along and adjoining" the team track; the word "adjacent" being used in the sense of "near to," or "neighboring," so that the order would be complied with, though the baggage room and platform were so constructed as to be some distance from the track, leaving a driveway between them.—*Bacon v. Boston & M.R.R.*, 77 A. 858, 83 Vt. 528.—*R R* 86.

NEAT CATTLE

Kan. 1894. An information for grand larceny describing the property taken as four head of "neat cattle" is sufficiently specific.—*State v. Hoffman*, 37 P. 138, 53 Kan. 700.—*Larc* 30(5).

Kan. 1894. "Neat cattle" are animals of the genus *bos*, as distinguished from horses, sheep, and goats, and hence information for stealing four steers, charging the taking of four head of "neat cattle," is not defective on the theory that "neat" means "nice" or "clean."—*State v. Hoffman*, 37 P. 138, 53 Kan. 700.

Mo. 1938. "Cattle" as used in statute punishing persons convicted of stealing domestic animals as though guilty of grand larceny, embraces domestic quadrupeds collectively, but the term "neat cattle" as used therein includes only cattle of the bovine species. V.A.M.S. § 560.155.—State v. Conley, 123 S.W.2d 103.—Larc 23.

Mo. 1938. Failure to use the term "cattle" or "neat cattle" in an information under statute punishing persons convicted of stealing domestic animals, including neat cattle, as though guilty of grand larceny, did not render the information invalid, since Supreme Court would take judicial notice that animals described in an information as a cow and a calf belonged to the class of neat cattle. R.S.1929, § 4064 (V.A.M.S. § 560.155).—State v. Conley, 123 S.W.2d 103.—Ind & Inf 61; Larc 30(5).

Mo. 1899. Under Rev.St.1889, § 3535, V.A.M.S. § 560.155, making it a felony to take, steal, and carry away any "neat cattle" belonging to another, an indictment charging defendants with having stolen "two head of neat cattle" sufficiently describes the property.—State v. Dewitt, 53 S.W. 429, 152 Mo. 76.—Larc 30(5).

Mo. 1886. An indictment under Rev.St.Mo. 1879, § 1307, making the stealing of "neat cattle" grand larceny, without regard to value, is sufficient, if it charges the theft of "certain cattle, to wit, one steer," and the value need not be laid. The term "cattle" designates domestic quadrupeds collectively, but the term "neat cattle" includes only cattle of the bovine species. A steer belongs to the class of neat cattle, and it would be sufficient to use the word "steer," without employing the term "cattle" or "neat cattle."—State v. Bowers, 1 S.W. 288.—Larc 30(5).

Nev. 1918. The term "bovine" is taken from the Latin "bos," which means cow or bull. "Neat cattle" are animals belonging to the genus "bos," term not embracing horses, sheep, goats, or swine. "Cattle" as generally used in Western America or the Western States means "neat cattle" straight-backed, domesticated animals of the bovine genus regardless of sex, and is not generally but may be, taken to mean calves, or animals younger than yearlings. It includes cows, bulls, and steers, but not horses, mares, geldings, colts, mules, jacks, or jennies, goats, hogs, sheep, shoats or pigs.—State v. District Court of Fifth Judicial Dist. in and for Nye County, 174 P. 1023, 42 Nev. 218.

N.M.Terr. 1900. A cow is the mature female of bovine animals, and hence an indictment describing the animal stolen as a "cow" is sufficient, under Comp.Laws 1897, § 79, making it an offense to steal any "neat cattle."—Wilburn v. Territory, 62 P. 968, 10 N.M. 402, 10 Gild. 402.

N.M.Terr. 1899. "Neat cattle" is a sufficient term as commonly applied in the United States to describe a beast of the bovine genus, and its use in an indictment was a sufficient description of the animal stolen.—Territory v. Christman, 58 P. 343, 9 N.M. 582, 9 Gild. 582.

N.M.App. 1973. Cattle upon which defendant placed an unrecorded brand were "neat cattle" within meaning of statute requiring such cattle to be branded. 1953 Comp. § 47-9-3.—State v. Vickery, 512 P.2d 962, 85 N.M. 389, certiorari denied 512 P.2d 953, 85 N.M. 380.—Anim 7.

Tex.Crim.App. 1898. "Neat cattle" more appropriately describes kine or animals of the bovine species than the term "cattle."—Matthews v. State, 47 S.W. 647, 39 Tex.Crim. 553, on rehearing 48 S.W. 189, 39 Tex.Crim. 553.

Wash. 1920. In prosecution for grand larceny of cattle under Rem.Code 1915, § 2605, denouncing the theft of domestic animals, including "neat cattle," instructions that "the cattle involved in this case were neat cattle" held not erroneous, where character of the cattle was not in issue, since the term "cattle" is a generic term for domestic quadrupeds, and in its primary sense embraces horses, mares, geldings, foals or fillies, asses, and mules, as well as animals of the ox kind, and since the term "neat" is used in the statute to distinguish cattle of the ox kind from cattle generally.—State v. Swager, 188 P. 504, 110 Wash. 431.—Crim Law 761(6).

NEBRASKA

Neb. 1889. The word "Nebraska," being a geographical name, cannot be appropriated by a loan and trust company to its own exclusive use, building up thereby a trade name which will be protected, and to which such company will have the exclusive right.—Nebraska Loan & Trust Co. v. Nine, 43 N.W. 348, 27 Neb. 507, 20 Am.St.Rep. 686.

NECESSARIES

App.D.C. 1940. As regards application of the statute exempting disability insurance from execution, for the head of a family the essentials of sustenance for his dependents remain "necessaries" as much when he is disabled as when he is well and employed since disability does not relieve him of obligation of support though it may affect the extent to which he can perform it. D.C.Code Supp. IV, T. 5, § 220p.—Schlaefter v. Schlaefter, 112 F.2d 177, 71 App.D.C. 350, 130 A.L.R. 1014.—Exemp 68.

C.A.9 (Cal.) 2002. The statutory list in definition of "necessaries" for purposes of maritime liens is not exhaustive, and the term "necessaries" includes most goods or services that are useful to the vessel and keep her out of danger, and include the things a prudent owner would provide to enable a ship to perform her particular function. 46 U.S.C.A. § 31301(4).—Ventura Packers, Inc. v. F/V JEANINE KATHLEEN, 305 F.3d 913.—Mar Liens 23.

C.A.11 (Fla.) 2000. "Necessaries," the provision of which may give rise to maritime lien, includes goods or services that are useful to vessel, keep her out of danger, and enable her to perform her particular function; they are things that prudent owner would provide to enable ship to perform well functions for which she has been engaged. 46

U.S.C.A. § 31342.—*In Re Container Applications Intern., Inc.*, 233 F.3d 1361.—*Mar Liens* 23.

C.A.11 (Fla.) 1995. Attorney fees which vessel repair company incurred in attempt to collect debt for repair work on vessel were not “necessaries” under maritime lien statute and, thus, vessel repair company was not entitled to maritime lien against vessel for attorney fees; attorney’s services did not help vessel perform its function, and services were provided to vessel repair company, not vessel. 46 U.S.C.A. §§ 31301(4), 31341, 31342.—*Bradford Marine, Inc. v. M/V Sea Falcon*, 64 F.3d 585.—*Mar Liens* 23.

C.A.11 (Fla.) 1992. Under maritime law, “necessaries” are items that prudent owner would provide to enable ship to perform functions for which she has been engaged, and include most goods or services that are useful to vessel to keep her out of danger and enable her to perform her particular function; these items may be money, labor, skill, material, or personal services.—*Trinidad Foundry and Fabricating, Ltd. v. M/V K.A.S. Camilla*, 966 F.2d 613.—*Mar Liens* 7.

C.A.5 (La.) 2000. Legal services on behalf of a vessel are not “necessaries” within meaning of section of the Federal Maritime Law Act (FMLA) affording a maritime lien to person providing necessities to a vessel. 46 U.S.C.A. § 31342.—*Gulf Marine and Indus. Supplies, Inc. v. GOLDEN PRINCE M/V*, 230 F.3d 178.—*Mar Liens* 7.

C.A.5 (La.) 1997. Supply boat services that plaintiff provided to offshore drilling rig were “necessaries” within meaning of Maritime Lien Act, so that plaintiff was entitled to assert maritime lien against that rig; supplies included drinking water and food for crew as well as drilling equipment and supplies to support drilling activities conducted by vessel. 46 U.S.C.A. § 31301(4).—*Trico Marine Operators, Inc. v. Falcon Drilling Co.*, 116 F.3d 159.—*Mar Liens* 23.

C.A.5 (La.) 1997. “Necessaries,” within meaning of Maritime Lien Act section which provides that person providing necessities to vessel has maritime lien on vessel and may bring civil action in rem to enforce lien, include most goods or services that are useful to vessel, keep her out of danger and enable her to perform her particular function. 46 U.S.C.A. § 31342(a).—*Trico Marine Operators, Inc. v. Falcon Drilling Co.*, 116 F.3d 159.—*Mar Liens* 23.

C.A.5 (La.) 1970. Where pilotage services were required by state law to be rendered for vessel, such services were “necessaries” under statute which allows lien to attach in favor of person furnishing certain types of services or other “necessaries” to operator of vessel, but which does not allow lien to attach if furnisher knows, or by reason of reasonable diligence could have ascertained, that operator was without authority to bind vessel under lien. *Ship Mortgage Act of 1920*, §§ 30, subsecs. P–T, 30, subsec. T, 46 U.S.C.A. §§ 971–975.—*Ajubita v. S/S Peik*, 428 F.2d 1345.—*Pilots* 13.

C.A.4 (Md.) 1967. Under provision of federal maritime lien act that supplier of “necessaries” shall be entitled to lien on vessel to which necessities are furnished, “necessaries” include stevedoring services. *Ship Mortgage Act, 1920*, § 30, subsecs. P–S, 46 U.S.C.A. §§ 971–974.—*International Terminal Operating Co. v. S. S. Valmas*, 375 F.2d 586.—*Mar Liens* 25.

C.A.4 (Md.) 1948. A seaman who incurred taxi bill of \$5 and advanced \$300 to captain to obtain his release from imprisonment was not entitled to lien for such sums on theory that captain is “necessary” to vessel within statute giving lien to persons furnishing “necessaries”. 46 U.S.C.A. § 971.—*Flavianos v. The Cypress*, 171 F.2d 435, certiorari denied 69 S.Ct. 1168, 337 U.S. 924, 93 L.Ed. 1732, certiorari denied *Maryland Drydock Co v. Flavianos*, 69 S.Ct. 1171, 337 U.S. 924, 93 L.Ed. 1732.—*Mar Liens* 25.

C.A.2 (N.Y.) 1979. Under New York law, husband has duty to provide wife with “necessaries,” which include necessary counsel fees that wife may incur. *Family Ct. Act N.Y.* § 438.—*Matter of Steingesser*, 602 F.2d 36.—*Hus & W* 19(1), 19(18).

C.A.1 (Puerto Rico) 1976. Stevedoring services are plainly “necessaries” within meaning of statute relating to persons entitled to maritime liens. *Ship Mortgage Act, 1920*, § 30, subsec. P, 46 U.S.C.A. § 971.—*Universal Shipping, Inc. v. Panamanian Flag Barge*, 563 F.2d 483.—*Mar Liens* 25.

C.C.A.8 1937. Under Minnesota law, husband is liable for necessities furnished to wife even though wife has independent means or even though husband has furnished her with money to pay for such necessities. “Necessaries,” in its legal sense, as applied to a wife, is not confined to articles of food and clothing required to sustain life or preserve decency, but includes such articles of utility, or even ornament, as are suitable to maintain the wife according to the estate and rank of her husband.—*Hill v. Commissioner of Internal Revenue*, 88 F.2d 941.

C.C.A.9 (Cal.) 1932. Supplies furnished by holders of option to purchase lobster catch to lobstering camps ashore established by ship’s charterer held not “necessaries” furnished ship. 46 U.S.C.A. §§ 971, 972.—*The Astorian*, 57 F.2d 85.—*Mar Liens* 27.

C.C.A.5 (La.) 1935. Board of Commissioners of Port of New Orleans in furnishing wharfage to vessel held to have furnished “necessaries” within statute conferring maritime lien on vessel to person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities to any vessel (46 U.S.C.A. § 971).—*The Western Wave*, 77 F.2d 695, certiorari denied *Board of Com’rs of Port of New Orleans v. North American Fruit & S S Corporation*, 56 S.Ct. 156, 296 U.S. 633, 80 L.Ed. 450.—*Wharves* 18.

C.D.Cal. 1985. “Necessaries,” within meaning of maritime lien statute, is any item furnished to a vessel which is reasonably necessary for the venture in which that particular ship is engaged. *Ship*

Mortgage Act, 1920, § 30, 46 U.S.C.A. § 971.—*Flexivan Leasing, Inc. v. M/V C.C. San Francisco*, 628 F.Supp. 1077, reversed and remanded *Foss Launch & Tug Co. v. Char Ching Shipping U.S.A., Ltd.*, 808 F.2d 697, 91 A.L.R. Fed. 873, certiorari denied *Intel Containers Intern. Corp. v. M/V C.C. San Francisco*, 108 S.Ct. 96, 484 U.S. 828, 98 L.Ed.2d 57.—*Mar Liens* 23.

N.D.Cal. 1970. Seamen's wages enjoy status of "necessaries" within Federal Maritime Lien Act. *Ship Mortgage Act*, 1920, § 30, subsecs. P-T, 46 U.S.C.A. §§ 971-975.—*In re SS Norberto Capay*, 330 F.Supp. 825.—*Mar Liens* 23.

D.D.C. 1997. To obtain release of boat arrested in enforcement of maritime lien for "necessaries" in the form of boat storage, boat owner was required to post security in the amount of the "necessaries," i.e., the overdue storage fees; term "necessaries" did not include attorney fees incurred in enforcing lien. 46 U.S.C.A. § 31301(4); Supplemental Admiralty and Maritime Claims Rule E(5)(a), 28 U.S.C.A.—*James Creek Marina v. Vesel My Girls*, 964 F.Supp. 20.—*Mar Liens* 23.

D.D.C. 1948. Under the common law and under District of Columbia law the husband is primarily liable for "necessaries" furnished his wife which include funeral expenses and such obligation is not affected by the Married Women's Act. D.C.Code 1940, §§ 30-201 et seq., 30-211.—*In re Tunison's Estate*, 75 F.Supp. 573.—*Hus & W* 19(1), 19(16).

S.D.Fla. 1990. Embarkation services provided to a passenger vessel were "necessaries" which gave rise to a maritime lien under the Federal Maritime Lien Act, and thus district court had admiralty jurisdiction of action in rem to recover for the services. 46 U.S.C.A. §§ 31341-31343, 31341(a)(4)(B), 31342(a).—*Kaleidoscope Tours v. M/V Tropicana*, 755 F.Supp. 382.—*Adm* 14; *Mar Liens* 23.

S.D.Ga. 1924. Lighterage, tarpaulins, and towage of lighters are "necessaries," as to lien.—*The City of Atlanta*, 17 F.2d 308.—*Mar Liens* 7, 8.

S.D.Ga. 1924. Lighterage, tarpaulins, and towage of lighters are "necessaries," as to lien if furnished to vessel, rather than owner.—*The City of Atlanta*, 17 F.2d 308.—*Mar Liens* 8.

D.Md. 1995. Charge levied on container cargo ships for each container as it entered or left stevedore's terminal, stuffing and stripping charges for loading and unloading containers, and mounting and grounding charges for placing containers onto truck chassis and removing them therefrom, either at beginning or end of their voyage, were "necessaries" within meaning of the Commercial Instruments and Maritime Liens Act (CIMLA). 46 U.S.C.A. § 31342.—*Ceres Marine Terminals, Inc. v. M/V Harmen Oldendorff*, 913 F.Supp. 919.—*Mar Liens* 23.

D.Md. 1995. Stevedore's charges for detention and container royalties were "necessaries" subject to maritime lien under the Commercial Instruments and Maritime Liens Act (CIMLA) where stevedore was required to pay detention charges and contain-

er royalties pursuant to collective bargaining agreement. 46 U.S.C.A. § 31342.—*Ceres Marine Terminals, Inc. v. M/V Harmen Oldendorff*, 913 F.Supp. 919.—*Mar Liens* 23.

D.Md. 1957. Under law granting maritime lien for the furnishing of necessities to a vessel, "necessaries" are considered as being more in the nature of supplies than services and are furnished to the vessel only when they are ordered for a particular vessel and thereafter are either actually put on board or brought within the control of the ship's officers. *Ship Mortgage Act*, 1920, § 30, Subsecs. M, P, 46 U.S.C.A. §§ 953, 971.—*Atlantic Steamer Supply Co. v. The Tradewind*, 153 F.Supp. 354.—*Mar Liens* 23.

D.Mass. 1971. Plaintiff pilot, who proffered his services as pilot to master of defendant vessel but was unlawfully refused, furnished "necessaries" to defendant vessel within meaning of statute relating to persons entitled to maritime lien for necessities, so that pilot was entitled to recover from defendant the full pilotage fees for services tendered to defendant vessel. *Ship Mortgage Act*, 1920, § 30, subsec. P, 46 U.S.C.A. § 971.—*Blair v. M/V Blue Spruce*, 329 F.Supp. 178.—*Pilots* 11, 13.

D.Mass. 1971. Pilotage services are "necessaries" within meaning of statute relating to maritime liens for necessities, so that master of defendant vessel was presumed to have had authority from owner to procure pilotage services for defendant vessel. *Ship Mortgage Act*, 1920, § 30, subsecs. P, Q, 46 U.S.C.A. §§ 971, 972.—*Blair v. M/V Blue Spruce*, 329 F.Supp. 178.—*Pilots* 13.

D.Mass. 1967. Within statutory maritime lien statute, the word "necessaries" should be broadly interpreted and test is whether supplies or services furnished are reasonably needed in ship's business. *Ship Mortgage Act*, 1920, § 30, subsec. P, 46 U.S.C.A. § 971.—*Layton Industries, Inc. v. Sport Fishing Cruiser Gladiator*, 263 F.Supp. 356.—*Mar Liens* 23.

D.Mass. 1923. Services rendered in fumigating baggage of passengers held to give right to lien; "necessaries." Services rendered on employment by its agent in fumigating the baggage of a steamship, required by the United States medical officer of the port before she would be allowed to land her passengers, held to give a right to a lien against the vessel, both under the general admiralty law and as "necessaries" under Merchant Marine Act, Sec. 30, subsec. P (Comp. St. Ann. Supp. 1923, Sec. 8146 1/4000).—*The Susquehanna*, 3 F.2d 1014.—*Mar Liens* 9.

D.Mass. 1923. Services rendered in fumigating baggage of passengers held to give right to lien; "necessaries."—*The Susquehanna*, 3 F.2d 1014.—*Mar Liens* 25.

E.D.N.Y. 1999. Prevailing in rem maritime lien claimant was not entitled to attorney fees, which were not "necessaries" under Maritime Liens Act. 46 U.S.C.A. § 31342.—*American Oil Trading, Inc. v. M/V SAVA*, 47 F.Supp.2d 348.—*Mar Liens* 23.

E.D.N.Y. 1999. "Necessaries," the provision of which can give rise to maritime lien, includes repairs, supplies, towage and use of dry dock or marine railway, and is interpreted broadly to include any goods and services "reasonably needed" in ship's business for vessel's continued operation. 46 U.S.C.A. § 31342(a)(2).—*Barwil ASCA v. M/V SAVA*, 44 F.Supp.2d 484.—*Mar Liens* 23.

E.D.N.Y. 1974. Payments made for supplies or services after ship was arrested could constitute "necessaries" for which suppliers would be entitled to liens despite contention that such supplies and services could not possibly be used for the "operation of the vessel." *Ship Mortgage Act*, 1920, § 30, subsec. K, P, 46 U.S.C.A. §§ 951, 971.—*P. T. Perusahaan Pelayaran Samudera Trihora Lloyd v. Salzachtal*, 373 F.Supp. 267.—*Mar Liens* 23.

E.D.N.Y. 1935. Lien against yacht for winter storage and repairs at lien claimant's shipyard held not controlled by state statute of limitations, but given by federal Merchant Marine Act; "storage" being included under word "necessaries". *Merchant Marine Act* 1920, § 20, subsec. P, 46 U.S.C.A. § 971; *Lien Law N.Y.* § 83.—*The Mendotta II*, 13 F.Supp. 1019.—*Mar Liens* 61.

S.D.N.Y. 1998. Under New York common law requiring parents to provide children with necessities of life, "necessaries" are not limited to such items as food, clothing, and shelter but, under certain circumstances, also include right of counsel.—*In re Akamine*, 217 B.R. 104.—*Child S* 124.

S.D.N.Y. 1991. Although maritime container rental fees fell within Federal Maritime Lien Act's definition of "necessaries," charges had to be limited to time period during which containers were actually necessities and could not include period during which containers were no longer being used by vessels. *Ship Mortgage Act*, 1920, § 30, Subsec. P, 46 U.S.C. (1988 Ed.) § 971 et seq.—*Itel Containers Intern. Corp. v. Atlantrafik Exp. Service Ltd.*, 781 F.Supp. 975, reversed 982 F.2d 765.—*Mar Liens* 33.

S.D.N.Y. 1987. Containers and chassis are necessary to the operation of container ship not only when they are on board the ship but also when they are being used to transport or store freight around the port area or to load it on board and, in those situations, may constitute "necessaries" for purposes of the Maritime Lien Act. *Ship Mortgage Act*, 1920, § 30, Subsec. P, 46 U.S.C.A. § 971.—*Itel Containers Intern. Corp. v. Atlantrafik Exp. Service, Ltd.*, 668 F.Supp. 225.—*Mar Liens* 23.

S.D.N.Y. 1943. Where divorced wife's trustee in bankruptcy sought to recover under husband's alimony obligation to satisfy creditor's claims, proof of claims arising after divorce for goods and services generally regarded as necessities without proof of necessity was insufficient to shift to husband burden of going forward to establish that wife was already adequately supplied, since the term "necessaries" ordinarily becomes meaningful only when an attempt is made to impose liability on husband for debts of wife.—*Glasser v. Rogers*, 53 F.Supp. 668.—*Bankr* 3066(6).

S.D.N.Y. 1942. What constitutes "necessaries" for which an admiralty lien will attach depends upon what is reasonably needed in the ship's business, regard being had to the character of the voyage and the employment in which the vessel is being used. 46 U.S.C.A. §§ 971–973.—*Walker-Skageth Food Stores v. the Bavois*, 43 F.Supp. 109.—*Mar Liens* 23.

S.D.N.Y. 1942. Liquors furnished to a pleasure yacht out of the Port of New York on the order of yacht's master, while it was spending the winter months at Miami, Fla., were "necessaries" for which an admiralty lien would attach. 46 U.S.C.A. §§ 971–973.—*Walker-Skageth Food Stores v. the Bavois*, 43 F.Supp. 109.—*Mar Liens* 23.

S.D.N.Y. 1931. Storage of vessels held to constitute "necessaries" within law authorizing maritime lien. *Merchant Marine Act* 1920, § 30, subsec. P, 46 U.S.C.A. § 971.—*The Artemis*, 53 F.2d 672.—*Mar Liens* 23.

S.D.N.Y. 1926. Broker not entitled to lien for services in shipping a crew in vessel's home port; "necessaries" (*Ship Mortgage Act* 1920 (Comp. St. Ann. Supp. 1923, Sec. 8146 1/4000)). The general maritime law does not give a lien to a broker for services in shipping a crew for a vessel in her home port, nor does such service come under the head of "necessaries," in *Ship Mortgage Act* 1920 (Comp. St. Ann. Supp. 1923, Sec. 8146 1/4000).—*The Princess*, 12 F.2d 808.—*Mar Liens* 5.

S.D.N.Y. 1926. Broker not entitled to lien for services in shipping a crew in vessel's home port; such services not coming within head of "necessaries". *Ship Mortgage Act* 1920, 46 U.S.C.A. § 971.—*The Princess*, 12 F.2d 808.—*Mar Liens* 25.

D.Or. 1950. A live crab tank, groceries, fishing tackle and fuel oil were "necessaries" within meaning of the *Ship Mortgage Act* of 1920 providing that any person furnishing "necessaries" to any vessel upon order of person authorized by owner shall have a maritime lien. *Ship Mortgage Act* of 1920, § 30, subsec. P, 46 U.S.C.A. § 971.—*Interstate Tractor & Equipment Co. v. The Mylark*, 90 F.Supp. 466.—*Mar Liens* 23.

E.D.Pa. 1979. Legal representation provided to husband under the Criminal Justice Act constituted "necessaries," and thus his wife had a legal obligation, to the extent of her financial ability, to reimburse the Government for its costs in providing legal representation to her husband, even though the alleged wrongful conduct for which husband was prosecuted occurred prior to the marriage, without wife's knowledge or involvement. 18 U.S.C.A. § 3006A; P.S.Pa.Const. art. 1, § 28; 19 P.S.Pa. § 793; 62 P.S.Pa. § 1973.—*U. S. v. O'Neill*, 478 F.Supp. 852.—*Hus & W* 19(14).

D.S.C. 1992. "Necessaries," for purposes of granting a maritime lien, encompasses any item which is reasonably needed for venture in which the ship is engaged. 46 U.S.C.A. §§ 31301(4), 31342.—*Redcliffe Americas Ltd. v. M/V Tyson Lykes*, 806 F.Supp. 69, reversed 996 F.2d 47.—*Mar Liens* 23.

S.D.Tex. 1961. Cigarettes furnished vessel were "necessaries" within statute providing that any person furnishing necessities to vessel upon order of owner shall have maritime lien. *Ship Mortgage Act*, 1920, § 30, subsec. P, 46 U.S.C.A. § 971.—*Allen v. The Contessa*, 196 F.Supp. 649.—*Mar Liens* 23.

S.D.Tex. 1950. Where proceeds of note signed by husband and wife were used for purpose of building a garage, painting bathroom, installing electrical fixtures, remodeling, painting and papering homestead, debt was not for "necessaries" furnished wife or her children within the meaning of the Texas statute making wife liable on debts contracted for such purposes so that wife would not be liable on note. *Vernon's Ann.Civ.St. art. 4623*.—*U.S. v. Belt*, 88 F.Supp. 510.—*Hus & W* 83.

E.D.Va. 1994. Under Maritime Lien Act, which provides that person providing "necessaries" to vessel has lien on vessel, "necessaries" includes repairs, supplies, towage and use of dry dock or marine railway. 46 U.S.C.A. § 31342(a).—*Newport News Shipbuilding and Dry Dock Co. v. S.S. Independence*, 872 F.Supp. 262.—*Mar Liens* 25.

E.D.Va. 1991. Unpaid insurance premiums give rise to maritime lien under Federal Maritime Lien Act; insurance is "necessary" for purposes of section of Act providing that person furnishing "necessaries" to any vessel is entitled to federal maritime lien. 46 U.S.C.A. §§ 31301(4), 31329.—*Flagship Group, Ltd. v. Peninsula Cruise, Inc.*, 771 F.Supp. 756.—*Mar Liens* 13.

E.D.Wis. 1993. Sails and hardware were "necessaries" of sailing yacht for purposes of determining applicability of Maritime Commercial Instruments and Liens Act and corresponding rules for maritime claims to claim of seller of such items. Supplemental Admiralty and Maritime Claims Rule C(6), 28 U.S.C.A.; 46 U.S.C.A. §§ 31341(a), 31342(a).—*Key Bank of New York v. Palmer Johnson, Inc.*, 838 F.Supp. 419.—*Mar Liens* 23.

E.D.Wis. 1986. Under Wisconsin law, "necessaries" are not limited to actual physical wants.—*U.S. v. Conn*, 645 F.Supp. 44.—*Hus & W* 19(14).

Bkrtcy.N.D.Ala. 2000. Term "necessaries," as used in the Federal Maritime Lien Act, has been interpreted broadly to include any goods or services reasonably needed in a ship's business for a vessel's continued operation. 46 U.S.C.A. §§ 31301, 31342.—*In re Aloha Racing Foundation, Inc.*, 257 B.R. 83.—*Mar Liens* 23.

Ala. 1988. Medical services rendered to minor's infant son were "necessaries" for which minor was obligated to pay after she disaffirmed contract she had executed with hospital.—*Ex parte Odem*, 537 So.2d 919, on remand *Children's Hosp. of Birmingham, Inc. v. Kelley*, 537 So.2d 921.—*Infants* 50.

Ala. 1944. Taxes against a minor's property are "necessaries" of the minor.—*Wiggins Estate Co. v. Jeffery*, 19 So.2d 769, 246 Ala. 183.—*Infants* 50.

Ala. 1930. House occupied as home for minor and family under circumstances showing complete emancipation was necessity for him as farmer, so

that he was liable for rent notwithstanding infancy; question as to what are "necessaries" being dependent on social position and situation in life of infant as well as his own fortune and that of his parents.—*Ragan v. Williams*, 127 So. 190, 220 Ala. 590, 68 A.L.R. 1182.

Ala.Civ.App. 1987. Whether particular things are "necessaries," so that minor may be contractually bound to pay for them, depends on social position and actual needs of minor.—*Children's Hosp. of Birmingham, Inc. v. Kelley*, 537 So.2d 917, affirmed in part, reversed in part *Ex parte Odem*, 537 So.2d 919, on remand 537 So.2d 921.—*Infants* 50.

Ala.App. 1915. Medical services are "necessaries" within the rule making a husband liable for necessities furnished the wife, even though the husband did not call in the physician or the call was over his objection.—*Johnson v. Coleman*, 69 So. 318, 13 Ala.App. 520.—*Hus & W* 19(15).

Ariz. 1939. Evidence sustained finding that trucks purchased by a minor which he used for hauling logs for the seller were not "necessaries" so as to require the minor to disaffirm the contract of purchase before suing for the consideration paid where the operation of the trucks was not the only means of livelihood open to the minor.—*Worman Motor Co. v. Hill*, 94 P.2d 865, 54 Ariz. 227, 124 A.L.R. 1363.

Cal. 1970. Counsel fees incurred on behalf of a minor child are in the nature of "necessaries" for which the parents are liable.—*In re Ricky H.*, 468 P.2d 204, 86 Cal.Rptr. 76, 2 Cal.3d 513.—*Child S* 124.

Cal.App. 1 Dist. 1939. Legal services rendered to incompetent wife to restore her to competency were "necessaries" for which husband was liable notwithstanding that husband opposed the proceeding to restore the wife to competency.—*Stone v. Conkle*, 88 P.2d 197, 31 Cal.App.2d 348.—*Hus & W* 19(18).

Cal.App. 1 Dist. 1939. Services rendered by attorney in attempt to restore incompetent to capacity held "necessaries" for which incompetent's estate is liable upon implied contract. *Civ.Code*, § 38.—*Stone v. Conkle*, 88 P.2d 197, 31 Cal.App.2d 348.—*Mental H* 251.

Cal.App. 2 Dist. 1920. Legal services cannot be deemed "articles necessary for a wife's support," to render her husband liable therefor, under *Civ.Code*, § 174; "necessaries" at common law consisting only of necessary food, drink, clothing, washing, physic, instruction, and a convenient place of residence.—*Sumner v. Mohn*, 190 P. 368, 47 Cal.App. 142.—*Hus & W* 19(18).

Cal.App. 4 Dist. 1942. Where services were rendered by an attorney in malpractice action on behalf of a minor at mother's request pursuant to a contract providing for contingent fees, which contract was void under probate code because never approved by any court, and the action was compromised by minor after reaching his majority and was dismissed and no judgment recovered, services ren-

dered by attorney were for "necessaries", and their reasonable value was recoverable from minor, but not from his mother.—*Leonard v. Alexander*, 122 P.2d 984, 50 Cal.App.2d 385.—Atty & C 141; *Infants* 50.

Cal.App. 4 Dist. 1942. The services of an attorney are usually considered as "necessaries", and a promise to pay for them is implied when they are rendered in a proceeding personal to an infant.—*Leonard v. Alexander*, 122 P.2d 984, 50 Cal.App.2d 385.—*Infants* 50.

Cal.App. 4 Dist. 1941. The word "necessaries", money required for which is exempt from execution, is relative term, and scope of its legal significance has been restricted or enlarged according to circumstances and conditions of parties concerned. Code Civ.Proc. § 690.11.—*Sanker v. Humborg*, 119 P.2d 433, 48 Cal.App.2d 205.—Exemp 36.

Cal.Super. 1957. Under statute exempting from execution all earnings of judgment debtor necessary for use of debtor's family, expenses on behalf of defendant's minor daughters incidental to attendance at university were for "necessaries" but adult daughter was not a member of "debtor's family" and earnings expended in sending such daughter did not fall within exemption. West's Ann.Code Civ.Proc. §§ 690.11, 710.—*Diamond v. Bent*, 320 P.2d 621, 157 Cal.App.2d Supp. 857.—Exemp 48(1).

Cal.Super. 1943. A debt contracted for an operation performed on husband was a debt contracted for one of the "necessaries" of life for which the separate property of the wife was liable. Civ.Code, § 171.—*Credit Bureau of San Diego v. Johnson*, 142 P.2d 963, 61 Cal.App.2d Supp. 834.—Hus & W 151(7).

Cal.Super. 1932. Dental services rendered husband are "necessaries" for which wife is liable under conditions prescribed by statute. Civ.Code, § 171.—*Smith v. Bentson*, 15 P.2d 910, 127 Cal.App.Supp. 789.—Hus & W 151(7).

Cal.Super. 1932. Complaint stated no cause of action against wife for "necessaries," where it contained no allegation husband and wife were living together when dental services were rendered. Civ. Code, § 171.—*Smith v. Bentson*, 15 P.2d 910, 127 Cal.App.Supp. 789.—Hus & W 229.3.

Colo. 1949. "Necessaries" which husband is obligated to provide wife include food, wearing apparel, medicine and medical attention, habitation and necessary furniture, and other articles for the wife's protection in society, consistent with husband's ability to pay and such articles and things as are necessary for her sustenance as well as preservation of her health and comfort.—*Read v. Read*, 202 P.2d 953, 119 Colo. 278.—Hus & W 19(14).

Colo. 1949. "Necessaries" which husband is obligated to provide wife, is not capable of exact definition, and its meaning is variable depending upon circumstances, financial and otherwise, of the parties.—*Read v. Read*, 202 P.2d 953, 119 Colo. 278.—Hus & W 19(14).

Colo. 1949. Where wife was destitute and husband was able to pay, cost of obtaining review of judgment of conviction of wife on a criminal charge was "necessaries" for which husband was liable.—*Read v. Read*, 202 P.2d 953, 119 Colo. 278.—Hus & W 19(18).

Del.Super. 1969. Statute permitting attachment of 10% of debtor's wages for articles used in the home, commonly designated as "necessaries" of life, should be liberally construed in favor of wage earner; however, legislature did not intend to limit articles for which wages may be attached to those which are absolutely indispensable to sustain life. 10 Del.C. § 4913.—*Bowers v. Cooper's Home Furnishings Co.*, 255 A.2d 884.—Exemp 68.

Ga. 1906. In order to determine whether a contract of an infant for a course in stenography was a contract for "necessaries," the evidence must show the condition in life of the infant, and that the parents or guardian of such infant refused to furnish such alleged necessary.—*Mauldin v. Southern Shorthand Business University*, 55 S.E. 922, 126 Ga. 681, 8 Am.Ann.Cas. 130.—*Infants* 50.

Ga. 1902. Some courts have sought to draw a distinction between what they term "necessaries" or "necessaries of life" or "prime necessities," and contracts or agreements with reference to other articles of commerce or merchandise. But this distinction is not well founded. What is at one time a luxury, at another time is a necessity. Things which were considered sufficient to satisfy the description of "necessaries" a few years ago would be considered wholly insufficient now under present conditions of civilization. How useful must a thing become before it enters the catalogue of "necessaries," so that contracts to restrain trade in regard to it, or to foster a monopoly in it, are void? Such distinction is unsound in principle.—*Brown v. Jacobs Pharmacy Co.* (State Report Title: *Brown & Allen v. Jacobs' Pharmacy Co.*), 41 S.E. 553, 115 Ga. 429, 90 Am.St.Rep. 126, 57 L.R.A. 547.

Ga.App. 1960. Medical services furnished to a minor child are classified as "necessaries".—*Southern Ry. Co. v. Neeley*, 114 S.E.2d 283, 101 Ga.App. 488.—Child S 113.

Ga.App. 1912. The question of what are "necessaries" for an infant depends largely upon his rank, social position, and like circumstances. Generally speaking, necessities for an infant include support and maintenance, food, lodging, clothing, medical attendance, and education suitable to his station in life.—*McLean v. Jackson*, 76 S.E. 792, 12 Ga.App. 51.

Ill.App. 1 Dist. 1965. Costs and attorney's fees, incurred in prosecution and defense of incompetency proceedings, constitute "necessaries" of the incompetent for payment of which his estate may be assessed by the court. S.H.A. ch. 3, § 113a.—*In re Sherwood's Estate*, 206 N.E.2d 304, 56 Ill.App.2d 334.—Mental H 251.

Ill.App. 1 Dist. 1959. Automobiles used for pleasure are not "necessaries".—*Pelham v. Howard*

Motors, Inc., 156 N.E.2d 597, 20 Ill.App.2d 528.—Infants 50.

Ill.App. 1 Dist. 1939. Services of attorneys in suit instituted on behalf of minors by next friend were "necessaries" for which the minor or next friend could make a binding agreement to pay reasonable compensation.—City Nat. Bank & Trust Co. of Chicago v. Sewell, 21 N.E.2d 810, 300 Ill. App. 582.—Infants 50, 84.

Ill.App. 2 Dist. 1960. Expense of treatment, detention and training of patient at state-operated institution for mentally ill fell within category of "necessaries", and patient's husband was liable for such expense, and husband, who was also conservator of patient's estate, had duty to reimburse patient's estate for payments to state made out of estate even though such payments were approved by court. S.H.A. ch. 68, § 15; ch. 91½, §§ 9-21, 9-25.—Bennett v. Bennett, 169 N.E.2d 172, 27 Ill.App.2d 24.—Hus & W 19(15).

Ill.App. 3 Dist. 1948. Under statute providing that every contract by persons adjudged insane is void as against that person and his estate, services rendered by attorneys, at request of friends of 80 year old insane person in efforts to have her released from mental hospital and returned to her home were compensable in a reasonable amount as a valid claim for "necessaries" against her estate where services rendered were performed in good faith and on reasonable grounds in a faithful and intelligent manner. S.H.A. ch. 3, § 126.—Templeman v. Pierson, 78 N.E.2d 319, 334 Ill.App. 1.—Mental H 375.

Ill.App. 4 Dist. 1969. "Necessaries" include medical services.—Abraham Lincoln Memorial Hospital Corp. v. Gordon, 249 N.E.2d 311, 111 Ill.App.2d 179.—Hus & W 19(15).

Ind.App. 1997. Medical expenses wife incurred while patient of hospital were medically necessary and, therefore, were "necessaries" under doctrine of necessities.—Porter Memorial Hosp. v. Wozniak, 680 N.E.2d 13.—Hus & W 19(15).

Ind.App. 1 Div. 1962. As used in statute requiring payment of reasonable price for "necessaries" sold and delivered to minor or other person incompetent to contract, quoted word means such things as are necessary to his support, use or comfort, including such personal comforts as comport with his condition and circumstances in life, provided he is in actual need of such things at time and obliged to procure them for himself. Burns' Ann.St. § 58-102.—Bowling v. Sperry, 184 N.E.2d 901, 133 Ind.App. 692.—Infants 50.

Iowa 1941. Legal services rendered by attorneys of ward in obtaining his release from hospital for the insane constituted the furnishing of "necessaries," agreement to pay therefor was to be implied from the furnishing of the services, approval of the district court could be had at the time allowance therefor was asked, and district court had jurisdiction to hear such claim and allow it.—In re Schulte's Guardianship, 1 N.W.2d 193, 231 Iowa 237.—Mental H 251, 375.

Iowa 1915. Where an attorney brought an action for a wife for divorce, and the husband filed a cross-petition, containing allegations reflecting on the character of the wife, who thereafter withdrew from the case, and the court granted a divorce to the husband on the cross-petition, the attorney could not, by independent action, recover from the husband for the services rendered the wife on the theory that they were "necessaries."—Wick v. Beck, 153 N.W. 836, 171 Iowa 115, Am. Ann. Cas. 1917A, 691, L.R.A. 1915F, 1162.—Atty & C 130.

Iowa 1897. The term "necessaries," in the common-law rule that the husband was bound to provide necessities for the wife and children, was not confined to food and clothing, but was construed to include articles of utility and ornament ordinarily enjoyed by families of persons of estate and station similar to that of the husband.—Neasham v. McNair, 72 N.W. 773, 103 Iowa 695, 64 Am. St. Rep. 202, 38 L.R.A. 847.

Kan. 1963. Generally, "necessaries" for which husband is liable include those things needed and suitable to rank and condition of spouses and style of life they have adopted.—Chipp v. Murray, 379 P.2d 297, 191 Kan. 73.—Hus & W 19(14).

Kan. 1959. Where at time plaintiff and defendant entered into share the ride agreement defendant was over 20 years of age, he was an employee of a construction company which was some 20 miles from their place of residence, defendant owned his own automobile and there was no other means of transportation to reach the place of employment, the agreement for sharing the ride was a contract for "necessaries" and hence was not subject to disaffirmance for reason of minority alone. G.S. 1949, 38-102.—Ehram v. Borgen, 347 P.2d 260, 185 Kan. 776.—Infants 50.

Ky. 1937. The statutory liability of husband for "necessaries" furnished to wife includes funeral expenses of wife. Ky. St. § 2130.—Colovo's Adm'r v. Gouvas, 108 S.W.2d 820, 269 Ky. 752, 113 A.L.R. 871.—Hus & W 19(16).

Ky. 1937. The statutory liability of husband for "necessaries" furnished to infant children includes funeral expenses of children. Ky. St. § 2130.—Colovo's Adm'r v. Gouvas, 108 S.W.2d 820, 269 Ky. 752, 113 A.L.R. 871.—Parent & C 3.5.

Ky. 1933. Fines paid by guardian to release ward from jail held "necessaries," for which guardian was entitled to credit on accounting after ward's death.—McCoy v. Ferguson, 60 S.W.2d 931, 249 Ky. 334, 90 A.L.R. 891.—Guard & W 58.

Ky. 1931. "Debts" as used in statutes of descent and distribution, making one's estate liable for "debts," held not to include "necessaries" furnished wife for which husband is made liable by statute. Ky. St. §§ 1393, 1403, 2130.—Palmer v. Turner, 43 S.W.2d 1017, 241 Ky. 322.—Ex & Ad 219.8.

Ky. 1931. Since "necessaries" is not defined in statute providing that husband shall be liable for "necessaries" furnished to wife, it must be given its common-law meaning. Ky. St. §§ 2127, 2128,

2130.—*Palmer v. Turner*, 43 S.W.2d 1017, 241 Ky. 322.—Hus & W 19(1).

Ky. 1931. Statute making husband liable for "necessaries" furnished to wife held to have continued husband's common-law liability for wife's funeral expenses. Ky.St. § 2130.—*Palmer v. Turner*, 43 S.W.2d 1017, 241 Ky. 322.—Hus & W 19(16).

Ky. 1914. Where a trustee, under a trust deed executed by a husband alone, filed suit against the husband and wife for the construction of the deed and for a settlement of the trust, a claim for legal services for the wife was not "necessaries," within Ky.St. § 2130.—*Mulligan v. Mulligan*, 171 S.W. 420, 161 Ky. 628.—Hus & W 19(18).

Ky. 1900. Under Ky.St. § 2130, providing that the husband shall be liable for "necessaries" furnished to the wife after marriage, the husband, and not the wife's estate, is liable for the expense of medical attention to the wife suitable to her situation and to his condition in life, and he is not entitled, therefore, to be reimbursed out of her estate for such expenses paid by him.—*Towery v. McGaw*, 56 S.W. 727, 22 Ky.L.Rptr. 155, rehearing denied 56 S.W. 982, 22 Ky.L.Rptr. 155.—Hus & W 19(15).

La.App. 2 Cir. 1962. Articles of furniture which wife had purchased after husband had left and removed the existing furnishings and furniture in the apartment, leaving wife without any furniture for her use were "necessaries" and husband was liable therefor. LSA-C.C. art. 120.—*Tricketts, Inc. v. Viser*, 137 So.2d 424.—Hus & W 19(14).

La.App.Orleans 1937. Under statute providing that husband must furnish wife with whatever is required for convenience of life in proportion to his means and condition, husband is presumed by law to have authorized contracts of wife for necessities for herself and family, and term "necessaries" is relative, depending upon social and financial status of parties and circumstances of each particular case. Civ.Code, art. 120.—*D. H. Holmes Co. v. Van Ryper*, 173 So. 584, modified 177 So. 417, 188 La. 431, 114 A.L.R. 905.—Hus & W 268(4).

La.App.Orleans 1937. Gowns, hat, brush, underwear, and food purchased by wife and charged to her account in her married name held "necessaries" for payment of which husband, with whom she was not living but from whom she was not legally separated, was liable. Civ.Code, art. 120.—*D. H. Holmes Co. v. Van Ryper*, 173 So. 584, modified 177 So. 417, 188 La. 431, 114 A.L.R. 905.—Hus & W 268(4).

Me. 1947. "Necessaries," for which minor is fully responsible, are necessary meat, drink, apparel, physic, etc., and his good teaching or instruction. R.S.1944, c. 106, § 2.—*Reed Bros. v. Giberson*, 54 A.2d 535, 143 Me. 4.—Infants 50.

Me. 1927. Boots and shoes purchased for resale held not "necessaries."—*Sawyer Boot & Shoe Co. v. Braveman*, 136 A. 290, 126 Me. 70.—Infants 50.

Me. 1924. The term "necessaries" is limited to articles of personal use necessary for the support of

the body and improvement of mind of infant, and is not extended to articles purchased for business purposes, though infant earns his living by the use of them, and has no other means of support.—*Utterstrom v. Myron D. Kidder, Inc.*, 124 A. 725, 124 Me. 10.—Infants 54.

Me. 1901. What are "necessaries" furnished a debtor or his family, within the statute providing that no property shall be exempt for money due for necessities furnished, is a question of fact depending on the varying circumstances in each case. Legal professional services do not belong to the class which can be excluded as a matter of law.—*Peaks v. Mayhew*, 48 A. 172, 94 Me. 571.

Md. 1966. Legal services rendered by attorney hired by divorced mother on behalf of infant son of divorced parents in action to judicially determine whether child should be enrolled in school for mentally disturbed children were "necessaries" furnished to infant for which divorced father was liable.—*Price v. Perkins*, 219 A.2d 557, 242 Md. 501.—Child S 124.

Md. 1959. Where husband, who was relatively wealthy, and wife, who was without means, agreed to separate and called upon husband's attorney who informed them that wife should seek her own counsel, and wife with at least tacit consent of husband consulted with attorney who rendered services in negotiations looking towards a property settlement and separation agreement which did not come to fruition, costs incident to wife's employment of counsel were justifiably and reasonably incurred, services of wife's attorneys were "necessaries" and husband was liable therefor. Code 1957, art. 16, §§ 24, 28.—*Weiss v. Melnicove*, 147 A.2d 763, 218 Md. 571.—Hus & W 19(18).

Md. 1955. At common law, meaning of term "necessaries" which husband was required to furnish to his wife, was relative, elastic and dependent on the circumstances, that is, the means and station in life of the couple, and liability of husband was not limited merely to articles necessary to sustain life or to preserve decency, but extended to things which would be desirable and suitable in view of the rank, fortune, and earning capacity of husband.—*Ewell v. State*, 114 A.2d 66, 207 Md. 288.—Hus & W 19(14).

Md. 1929. Wife's counsel fees in resisting modification of divorce decree respecting infant's custody held not recoverable from husband as "necessaries" for infant's benefit.—*Carter v. Carter*, 144 A. 490, 156 Md. 500.—Child C 940.

Md. 1929. "Necessaries," as respects parent's responsibility to child may include services of attorney if reasonable and necessary to protect infant's property rights, personal liberty, or relief.—*Carter v. Carter*, 144 A. 490, 156 Md. 500.—Child S 124.

Mass. 1943. On petition for support by wife who is living apart from her husband for justifiable cause, the pecuniary resources of the husband are not to be regarded as a basis for a division of property, but have a bearing on the condition in life of the parties and thus on the necessities of the

wife, since the term “necessaries” is not confined to articles of food or clothing required to sustain life, but has a much broader meaning and includes such articles for use by a wife as are suitable to maintain her and the family according to the property and condition in life of her husband. *M.G.L.A. c. 209, § 32.—Coe v. Coe*, 46 N.E.2d 1017, 313 Mass. 232.—*Hus & W* 298(1).

Mass. 1922. “Necessaries,” as respects a husband’s liability, are not confined to articles of food or clothing required to sustain life, but include such articles for use by a wife as are suitable to maintain her according to her husband’s property and condition in life.—*Jordan Marsh Co. v. Cohen*, 136 N.E. 350, 242 Mass. 245, 24 A.L.R. 1480.—*Hus & W* 19(14).

Mass. 1922. Furniture and household goods sold a wife are within the class of “necessaries” for which a husband is liable.—*Jordan Marsh Co. v. Cohen*, 136 N.E. 350, 242 Mass. 245, 24 A.L.R. 1480.—*Hus & W* 19(14).

Mass. 1906. Under Rev.Laws, c. 145, § 25, requiring guardians to sue for and receive debts due their wards, and to represent their wards in all actions unless some other person is appointed as guardian ad litem or next friend, and section 23 providing for guardians ad litem for minors in suits in which the latter may be interested, services of an attorney in settling the estate of a deceased person, in which a minor is interested, are not “necessaries” for which the minor is liable, in the absence of an employment of the attorney by the minor’s guardian.—*McIsaac v. Adams*, 76 N.E. 654, 190 Mass. 117, 112 Am.St.Rep. 321.

Mass. 1896. The law does not contemplate that a minor shall open a shop and become a trader or a proprietor of a business which involves the making of a variety of contracts. Hand tools, to a reasonable amount, such as are ordinarily provided by a journeyman and necessary in his trade, may be “necessaries” for which the estate of a minor would be bound, but a barber’s chair and shop, and articles of furniture designed for furnishing the shop, are not necessities.—*Ryan v. Smith*, 43 N.E. 109, 165 Mass. 303.

Mich. 1930. “Necessaries” are not limited to those things which are indispensable to infant’s personal support and comfort.—*Sisson v. Schultz*, 232 N.W. 253, 251 Mich. 553.

Mich. 1926. Surgical operations are “necessaries” for which infants may contract. *Comp.Laws* 1915, § 11833.—*Bishop v. Shurly*, 211 N.W. 75, 237 Mich. 76.—*Infants* 50.

Mich. 1925. Under *Comp.Laws* 1915, § 13968, doctor performing professional services for minor without express contract for payment is entitled to order by probate court directing payment by guardian, and need not sue latter; such services being “necessaries,” for which infant is liable.—*In re Dzwonkiewicz’s Estate*, 203 N.W. 671, 231 Mich. 165.—*Infants* 50.

Mich. 1886. Medical services are “necessaries,” such as to make a married woman’s contract there-

for binding upon herself.—*Carstens v. Hanselman*, 28 N.W. 159, 61 Mich. 426, 1 Am.St.Rep. 606.

Mich. 1883. The word “necessaries,” as used to indicate those things for which an infant is liable when furnished to him, should be construed to mean things necessary to the infant, and not articles necessary to a business which he is engaged in; and hence, where an infant’s sole business was to carry on his mother-in-law’s farm for one-half of the produce, the price of a horse sold to him to be used in such business was not a necessary for which he was liable.—*Wood v. Losey*, 15 N.W. 557, 50 Mich. 475.

Minn. 1920. Attorney’s fees and expenses in replevin action by a wife against her husband to obtain possession of property detained by him are not “necessaries” for which he is liable.—*Wolf, Habein & Co. v. Mapson*, 178 N.W. 318, 146 Minn. 174.—*Hus & W* 19(18).

Miss. 1948. Where brother removed insane sister from state hospital, board, lodging clothing, medical attention and nursing furnished sister by brother were “necessaries” within rule requiring insane persons or their estate to pay for necessities furnished them in good faith.—*Talbert v. Ellzey*, 35 So.2d 628, 203 Miss. 612.—*Mental H* 375.

Miss. 1936. Wants of insane person which are personal to body and mind are “necessaries” within rule requiring insane person or his estate to pay for necessities furnished him in good faith.—*McCully v. McCully*, 168 So. 608, 175 Miss. 876.—*Mental H* 375.

Mo.App. 1960. Where emancipated minor of apparent maturity, who was about to be married, purchased a home for a fair price on a mortgage arrangement by misrepresenting his age, was married and lived in home for some time, separated from wife, placed himself in a position where he could not make restitution to the other parties, and sought to disaffirm his obligations and recover payments made on the mortgage, the contract was for “necessaries”, minor was estopped to disaffirm his contract, and was liable on the contract both as to payments made, and as to any deficiency resulting on foreclosure sale. Section 442.080 RSMo 1949, V.A.M.S.—*Merrick v. Stephens*, 337 S.W.2d 713.—*Infants* 50, 55, 56.

Mo.App. 1939. It is common knowledge that food, clothing and expenses in sending a child to school are “necessaries.”—*Davis v. Gould*, 131 S.W.2d 360, 234 Mo.App. 42.—*Evid* 5(2).

Mo.App. 1937. As respects liability of infant, term “necessaries” is a relative one, depending for its application upon social position and situation in life of infant, but is limited to things furnished of character essential to infant’s bodily and mental needs.—*Freiburghaus v. Herman Body Co.*, 102 S.W.2d 743.—*Infants* 50.

Mo.App. 1935. Attorney held not entitled to lien on settlement for injuries to minor client, where attorney was not employed by guardian or curator under direction of probate court, since attorney’s services were not “necessaries”. *R.S.* 1939,

§§ 395, 3358, 13337, 13338 (V.A.M.S. §§ 431.060, 457.420, 484.130, 484.140).—*Fenn v. Hart Dairy Co.*, 83 S.W.2d 120, 231 Mo.App. 1005.—*Atty & C* 174.

Mo.App. 1935. That attorney's services were beneficial to minor client was not sufficient to classify them as "necessaries". R.S.1929, § 2971 (V.A.M.S. § 431.060).—*Fenn v. Hart Dairy Co.*, 83 S.W.2d 120, 231 Mo.App. 1005.—*Infants* 50.

Mo.App. 1935. Whether attorney's services are to be considered "necessaries" depends on whether there is necessity therefor. R.S.1929, § 2971 (V.A.M.S. § 431.060).—*Fenn v. Hart Dairy Co.*, 83 S.W.2d 120, 231 Mo.App. 1005.—*Infants* 50.

Mo.App. 1916. "Necessaries" for the furnishing of which to his children the parent is liable, although furnished without his consent, include food, drink, clothing, washing, medicines, instruction, and suitable places of residence.—*Gately Outfitting Co. v. Vinson*, 182 S.W. 133.—*Child* S 100.

Mo.App. 1904. In the absence of notice to the contrary, the law will imply authority on the part of a wife, who is living with her husband, to buy such articles on his credit as pertain to the household arrangements, which are commonly under a wife's care, or, as has been said, she is presumed to have authority to purchase "necessaries" on the husband's credit as his agent. When the parties are maintaining conjugal relations, the necessity of the wife's purchase may be a material circumstance to prove her authority. As to "necessaries," in the sense of food, clothing, shelter, medical attendance, and such things as every one must have, there can never be a question of a wife's right to provide them if her husband does not. But when the "necessaries" are taken to mean not only articles of strict necessity, but things needed to equalize the wife in comfort to other women of her condition, an element of uncertainty is introduced. As to such things, the husband's responsibility does not depend on the question of necessity but on the wife's agency, which is a question for the jury. The necessity of the articles bought, the means of the parties, their condition in life, and the previous conduct of the husband with reference to the wife's purchases in his name, all enter into the inquiry, as circumstances bearing on the measure of authority she has received, or appears to have received, from him.—*Johnson v. Briscoe*, 79 S.W. 498, 104 Mo.App. 493.

Mo.App. 1902. In discussing what are "necessaries" within the meaning of Rev.St.1899, §§ 4339, V.A.M.S. § 451.260, securing to a wife the profits of her separate estate, except that income from her realty and her personalty shall be liable for her husband's debts for "family necessities," the court remarks that what are family necessities depends largely upon the property condition of the husband or wife, so that whether an article purchased is a necessary article depends much on the ability of the parties to afford it, and the style of the life they lead. The property status, mode of life, and condition at the time of the purchase fixes the status of the thing purchased, and it is not charged by subse-

quent change of condition.—*Megraw v. Woods*, 67 S.W. 709, 93 Mo.App. 647.

Mont. 1965. Where services of attorney for unemployment compensation claimants restored them to rolls of Unemployment Compensation Commission, set aside one-year purge from rolls of Commission, and cleared their names of fraud, attorney's fees should be considered as debt incurred for "necessaries" within meaning of provision of Unemployment Compensation Law that any assignment or pledge or encumbrance of any kind will be void, except for debts incurred for "necessaries" furnished to claimant, his spouse, or dependents while he was unemployed. R.C.M.1947, § 87-143.—*McAlear v. Unemployment Compensation Commission*, 405 P.2d 219, 145 Mont. 458.—*Social* S 721.

Mont. 1965. Question whether legal services are to be considered "necessaries" within meaning of provision of Unemployment Compensation Law that any assignment or pledge or encumbrance of any kind will be void, except for debts incurred for "necessaries" furnished to claimant, his spouse, or dependents during time when claimant was unemployed depends on whether there was a necessity for such services. R.C.M.1947, § 87-143.—*McAlear v. Unemployment Compensation Commission*, 405 P.2d 219, 145 Mont. 458.—*Social* S 721.

Mont. 1921. Attorneys' fees in a divorce suit are not "necessaries," within Rev.Codes, §§ 3724, 3725, making the husband responsible for wife's "necessaries"; a divorce not being a necessary.—*Grimstad v. Johnson*, 201 P. 314, 61 Mont. 18, 25 A.L.R. 351.—*Divorce* 197.

Neb. 1985. "Necessaries" for which an infant is liable despite his general inability to contract has no exact definition, the term is flexible and varies according to facts of each individual case; the particular infant must have an actual need for articles furnished, not for mere ornament or pleasure, articles must supply infant's personal needs, either those of his body or those of his mind, although term is not confined to things as are required for a bare subsistence but are those requisite for maintenance of existence, depending on social position and situation in life of infant.—*Webster Street Partnership, Ltd. v. Sheridan*, 368 N.W.2d 439, 220 Neb. 9.—*Infants* 50.

Neb. 1960. In determining whether goods furnished to a minor are necessities within statute, the meaning of the term "necessaries" is a mixed question of law and fact to be determined in each case from the particular circumstances. R.R.S.1943, § 69-402.—*Smith v. Wade*, 100 N.W.2d 770, 169 Neb. 710.—*Infants* 102.

Neb. 1948. Under statute, husband continues to be primarily liable as at common law for expenses of last sickness of wife and for her proper burial, as for "necessaries" furnished the family. R.S.Supp. 1947, § 42-201.—*In re White's Estate*, 33 N.W.2d 470, 150 Neb. 167.—*Hus & W* 19(16).

Neb. 1894. "What are necessities for an infant cannot be defined by any general rule applicable to

all cases. The common law defines "necessaries" to consist only of necessary food, clothing, drink, washing, mending, instruction, and a competent place of residence. What are necessities is a mixed question of law and fact, to be determined in each case from the particular facts, circumstances, and surrounding in the case. The court, in *Munson v. Washband*, 31 Conn. 303, 83 Am.Dec. 151, said: "The rule usually stated in the books confines the term 'necessaries,' for which a minor may bind himself, to suitable food and clothing, shelter, washing, medicine, medical attendance, and education, but this depends entirely on what the court or jury may think in each case suitable and proper, in reference to the infant's condition and station in life."—*Englebert v. Troxell*, 58 N.W. 852, 40 Neb. 195, 42 Am.St.Rep. 665, 26 L.R.A. 177.

Neb. 1891. The provision of Code, § 531, rendering subject to execution property for any debt contracted for "necessaries," refers to debts contracted for the debtor and his family, but not for debts incurred in carrying on a hotel or boarding-house business.—*Lenhoff v. Fisher*, 48 N.W. 821, 32 Neb. 107.

N.J.Err. & App. 1904. Services such as are particularly described in opinion, rendered in caring for, nursing and ministering to the health and comfort of a lunatic, belong to the class of "necessaries" which are recoverable against the lunatic, and, after her death, against her estate.—*Waldron v. Davis*, 58 A. 293, 70 N.J.L. 788, 41 Vroom 788, 66 L.R.A. 591.—*Mental H 375*.

N.J.Super.A.D. 1974. Counsel fees and costs awarded to wife on entry of final judgment of divorce were "necessaries" and, as such, were within class of indebtedness excepted from release by a discharge in bankruptcy. Bankr.Act, § 17, subd. a(7), 11 U.S.C.A. § 35(a)(7); R. 4:42-9.—*Pelusio v. Pelusio*, 328 A.2d 10, 130 N.J.Super. 538.—*Bankr 3360*.

N.J.Sup. 1918. Where infant was engaged in business of operating automobile as common carrier, whatever was furnished to him to enable him to carry on such business did not come within description of "necessaries."—*La Rose v. Nichols*, 103 A. 390, 91 N.J.L. 355, reversed 105 A. 201, 92 N.J.L. 375, 6 A.L.R. 412.—*Infants 50*.

N.J.Ch. 1928. "Necessaries" to be furnished ward from estate consist of food, drink, clothing, medical attention, and suitable residence.—*Caruso v. Caruso*, 141 A. 16, 102 N.J.Eq. 393, reversed 148 A. 882, 106 N.J.Eq. 130.—*Guard & W 30(1)*.

N.M. 1940. To recover from daughter's husband for necessities furnished the daughter by mother, it was necessary to show that the husband himself had failed to provide the "necessaries" which would include medical services. Comp.St.1929, §§ 68-102, 68-103, 68-104.—*Nicholas v. Bickford*, 100 P.2d 906, 44 N.M. 210.—*Hus & W 19(2), 19(15)*.

N.Y. 1935. Word "support," within statute providing for order requiring husband to pay sum necessary for wife's support during pendency of divorce or separation action, means the supply of

"necessaries" which are not limited to food, clothing, and a habitation. Civil Practice Act, § 1169.—*Dravecko v. Richard* (State Report Title: *Dravecka v. Richard*), 196 N.E. 17, 267 N.Y. 180.—*Divorce 209*.

N.Y. 1912. A contract for necessities made by an infant is binding, but the word "necessaries" is a relative term, except when applied to such things as are obviously requisite for the maintenance of existence, and depends on the social position and situation in life of the infant, as well as on his own fortune, and that of his parents.—*International Text-Book Co. v. Connelly*, 99 N.E. 722, 206 N.Y. 188, 42 L.R.A.N.S. 1115.—*Infants 50*.

N.Y.A.D. 1 Dept. 1956. Where \$6,000 provided by husband for legal services for wife in action for separation were more than sufficient to cover legal services needed, additional services procured by wife were beyond level of "necessaries" for which husband could be held liable.—*Rudnick v. Tuckman*, 149 N.Y.S.2d 809, 1 A.D.2d 269.—*Hus & W 19(18)*.

N.Y.A.D. 1 Dept. 1947. Legal services rendered wife in an accounting suit against husband arising out of business venture in which both had been engaged were not "necessaries" which husband was required by law to provide for his wife.—*Steisel v. Gratzler*, 74 N.Y.S.2d 654, 272 A.D. 673.—*Hus & W 19(18)*.

N.Y.A.D. 1 Dept. 1947. Word "support" in statute authorizing court during pendency of action for divorce, separation or annulment of marriage to require husband to pay any sums necessary for "support" of wife, comprehends "necessaries" which in turn includes counsel fees. Civil Practice Act, § 1169.—*Application of Kaufman*, 70 N.Y.S.2d 736, 272 A.D. 323, affirmed 78 N.E.2d 611, 297 N.Y. 814.—*Divorce 209, 221; Marriage 62*.

N.Y.A.D. 1 Dept. 1924. Evidence held to justify finding that services of detectives in shadowing husband in connection with wife's separation action were "necessaries" required for her comfort, protection, and support.—*Lanyon's Detective Agency v. Cochrane*, 206 N.Y.S. 392, 210 A.D. 590, reversed 148 N.E. 520, 240 N.Y. 274, 41 A.L.R. 1432, reargument denied 150 N.E. 530, 241 N.Y. 504.—*Hus & W 232.3*.

N.Y.A.D. 1 Dept. 1914. The word "necessaries," within the rule as to a husband's liability for goods purchased by his wife, is not confined to clothing and food, and what constitutes necessities depends in a large measure upon the scale and style of living adopted by the husband.—*Wickstrom v. Peck*, 148 N.Y.S. 596, 163 A.D. 608.—*Hus & W 19(14)*.

N.Y.A.D. 1 Dept. 1909. A judgment for damages caused by negligence is not for "necessaries," within Code Civ.Proc. § 1391, authorizing execution against wages or salary, when the judgment was obtained wholly for necessities furnished.—*Kelly v. Mulcahy*, 116 N.Y.S. 61, 131 A.D. 639.—*Exemp 68*.

N.Y.A.D. 1 Dept. 1904. A judgment, in an action on a judgment of another state, is not one

recovered for "necessaries," within Code Civ.Proc. § 1391, as amended by Laws 1903, p. 1071, c. 461, now Civil Practice Act, § 684, and Justice Court Act, § 300, authorizing an order for execution on such a judgment, against income from a trust fund.—*Neuman v. Mortimer*, 90 N.Y.S. 524, 34 Civ.Proc.Rep. 164, 98 A.D. 64.

N.Y.A.D. 2 Dept. 1992. Legal services on behalf of wife in connection with husband's divorce action were "necessaries" for which husband could be held liable after dismissal of the divorce action. *McKinney's DRL* § 237.—*Fernandes v. Rucker*, 587 N.Y.S.2d 740, 186 A.D.2d 171.—*Hus & W* 19(18).

N.Y.A.D. 2 Dept. 1989. Amount spent by former wife on premiums for insurance on former husband's life, as well as interest on loans former wife was required to incur during those periods when former husband was not expending any money for support of family, were properly deemed "necessaries."—*Schneider v. Schneider*, 548 N.Y.S.2d 716, 156 A.D.2d 439, 159 A.D.2d 501.—*Child S* 149, 156.

N.Y.A.D. 2 Dept. 1967. Household expenses were not "necessaries" within separation agreement which was incorporated in Mexican divorce decree obtained by wife and which obligated husband to pay for wife's expenditures for necessities of the minor children.—*Horne v. Horne*, 281 N.Y.S.2d 958, 28 A.D.2d 876, modified 292 N.Y.S.2d 411, 22 N.Y.2d 219, 239 N.E.2d 348.—*Hus & W* 279(1).

N.Y.A.D. 2 Dept. 1960. Legal services rendered for a wife or child constitute "necessaries."—*Friou v. Gentes*, 204 N.Y.S.2d 836, 11 A.D.2d 124.—*Child S* 124; *Hus & W* 19(18).

N.Y.A.D. 2 Dept. 1905. A claim for surgical services is not within Civil Practice Act, §§ 665, subd. 7, 684, Justice Court Act, § 300, relating to exemptions and providing that where a judgment has been recovered wholly for "necessaries," etc., and execution has been returned unsatisfied, the judgment creditor may have execution against wages due the debtor.—*Taylor v. Barker*, 95 N.Y.S. 474, 108 A.D. 21.

N.Y.Sup. 1995. Legal services rendered for wife or child are "necessaries" for which husband or father may be held liable.—*Merrick v. Merrick*, 622 N.Y.S.2d 852, 163 Misc.2d 929, affirmed 639 N.Y.S.2d 818, 225 A.D.2d 491, leave to appeal dismissed 649 N.Y.S.2d 383, 88 N.Y.2d 1017, 672 N.E.2d 609.—*Hus & W* 19(1), 19(18).

N.Y.Sup. 1967. Parent must provide a common school education for his child, that is, such amount of education as is required by the state, but in the absence of special or unusual circumstances a college education is not within the purview of "necessaries" for which a parent can be obligated.—*Dicker v. Dicker*, 283 N.Y.S.2d 941, 54 Misc.2d 1089.—*Child S* 116.

N.Y.Sup. 1961. Legal and accounting fees, disbursements, and other expenses incurred by former wife as guardian ad litem for children in lengthy support proceedings against former husband resulting in substantial increase of benefits to children

were "necessaries", and while court's discretion would be exercised in favor of award of counsel fees, accounting fees and disbursements for former wife against former husband, it would not award her fees for acting as guardian.—*Matthews v. Matthews*, 222 N.Y.S.2d 31, 30 Misc.2d 681, modified 237 N.Y.S.2d 659, 18 A.D.2d 830, affirmed 250 N.Y.S.2d 810, 14 N.Y.2d 778, 199 N.E.2d 843.—*Child S* 124; *Infants* 83.

N.Y.Sup. 1958. Where wife was granted a separation with \$50 per week alimony for herself and for the support of children of marriage, support meant "necessaries" which included legal services to wife and wife was not entitled to reasonable attorney's fee to oppose motion of husband to reduce alimony payments. Civil Practice Act, §§ 1169, 1170.—*Deitch v. Deitch*, 177 N.Y.S.2d 891, 12 Misc.2d 980.—*Divorce* 222.

N.Y.Sup. 1956. Professional services rendered by attorney of wife in habeas corpus proceeding between husband and wife may be "necessaries" for which husband is legally liable.—*Ex parte People ex rel. Sabbath v. Sabbath*, 152 N.Y.S.2d 828, 2 Misc.2d 593.—*Hus & W* 19(18).

N.Y.Sup. 1953. Legal services rendered in behalf of minor children in connection with unsuccessful action in Supreme Court to increase amount payable by divorced father for support of children did not constitute "necessaries" for which father could be held liable, where it was held in such action that father had fulfilled all obligations placed upon him by Nevada divorce decree.—*Guterman v. Langerman*, 123 N.Y.S.2d 684, affirmed in part, reversed in part 153 N.Y.S.2d 113, 2 A.D.2d 63.—*Child S* 124.

N.Y.Sup. 1953. Legal services rendered in behalf of minor children in connection with proceeding in Domestic Relations Court resulting in order requiring father to pay \$75 per week for support of each of two minor children instead of the \$25 per week awarded for such support by Nevada divorce decree constituted "necessaries" for the reasonable value of which father should be held liable. Domestic Relations Court Act, § 137, subd. 1.—*Guterman v. Langerman*, 123 N.Y.S.2d 684, affirmed in part, reversed in part 153 N.Y.S.2d 113, 2 A.D.2d 63.—*Child S* 124.

N.Y.Sup. 1951. A high school education is included within the legal term "necessaries", describing the items which a parent is under the duty to furnish for his child.—*O'Brien v. Springer*, 107 N.Y.S.2d 631, 202 Misc. 210.—*Child S* 116.

N.Y.Sup. 1946. In absence of allegation indicating that husband was guilty of conduct which justified wife in living separate from husband, husband was not liable for legal services rendered to wife in separation action on theory that they were "necessaries".—*Steisel v. Gratzner*, 66 N.Y.S.2d 526, 3 Misc.2d 816.—*Hus & W* 19(18).

N.Y.Sup. 1943. Legal services rendered to a wife for her protection, even though she is separated from her husband, are "necessaries" for which the attorney may recover from the husband.—*Gib-*

son v. Gibson, 41 N.Y.S.2d 598, 179 Misc. 661, affirmed 44 N.Y.S.2d 372, 266 A.D. 975.—Hus & W 19(18).

N.Y.Sup. 1943. Where after New York resident wife obtained judgment of separation from husband, husband obtained default Florida divorce decree from wife upon service by publication, services rendered and to be rendered by wife's attorney in defending in husband's New York action against wife for a decree that Florida decree was entitled to full faith and credit were "necessaries" for which husband was liable.—Gibson v. Gibson, 41 N.Y.S.2d 598, 179 Misc. 661, affirmed 44 N.Y.S.2d 372, 266 A.D. 975.—Hus & W 19(18).

N.Y.Sup. 1943. The statute exempting benefits under disability insurance policy from execution to satisfy insured's debts or liabilities, except those for necessities furnished insured after commencement of disability, should be given interpretation which will not defeat its purpose of securing to disabled persons a modicum of income for their primitive needs, free from claims against them, so as to require that word "necessaries" be given its narrowest meaning of food, clothing and shelter and preclude recovery of proceeds of policy to satisfy judgment on notes purchased from insured by judgment creditor, though insured used purchase money for necessities. Insurance Law, § 166, subd. 2(a).—Abrams v. Parker, 41 N.Y.S.2d 434.—Insurance 3488.

N.Y.Sup. 1939. The term "necessaries," as used with respect to father's liability for necessities furnished an infant, is a relative term and depends upon the social position and situation in life of the infant as well as upon his own fortune and that of his parents.—Macfadden v. Macfadden, 17 N.Y.S.2d 118, 173 Misc. 85, reversed 33 N.Y.S.2d 815, 263 A.D. 944.—Child S 100.

N.Y.Sup. 1935. Legal services rendered for wife in defending divorce action brought by husband held "necessaries" for which husband was liable in independent action.—Robinson v. Roberts, 281 N.Y.S. 23, 156 Misc. 37.—Hus & W 19(18).

N.Y.Sup. 1933. Services of wife's attorneys in defending husband's habeas corpus proceeding to obtain custody of child held "necessaries" for which husband was liable.—McLaughlin v. McCanliss, 262 N.Y.S. 529, 146 Misc. 518, affirmed 268 N.Y.S. 912, 240 A.D. 964.—Hus & W 19(18).

N.Y.Sup. 1933. Services of wife's attorneys in defending husband's habeas corpus proceeding to obtain custody of child held "necessaries" for which husband was liable. Since it was husband who left wife and thereafter sought to take from her their infant child, he was in no position to urge that services of wife's attorneys in defending habeas corpus proceeding were aimed at disruption of his home and family and were therefore not necessities. Generally, whatever naturally and reasonably tends to relieve distress or materially and in some essential particular to promote comfort, either of body or mind, may be deemed to be a "necessary," for which wife under proper circumstances may pledge husband's credit.—McLaughlin v. McCan-

liss, 262 N.Y.S. 529, 146 Misc. 518, affirmed 268 N.Y.S. 912, 240 A.D. 964.

N.Y.Sup. 1894. A dwelling house is not within the definition of "necessaries," so as to render an infant liable on a contract for its erection.—Allen v. Lardner, 60 N.Y.St.Rep. 768, 29 N.Y.S. 213, 78 Hun 603.—Infants 50.

N.Y.Sup.App.Term 1962. Legal services rendered to former wife in connection with proceeding to vacate prima facie valid divorce decree of sister state, which proceeding was discontinued, were not "necessaries" for which former husband was liable.—Frooks v. Peck, 232 N.Y.S.2d 137, 35 Misc.2d 177.—Divorce 381.

N.Y.Sup.App.Term 1960. Legal services rendered by attorney in obtaining support order in Domestic Relations Court were "necessaries" for which child's father was liable.—Levy v. Kaufman, 219 N.Y.S.2d 91, 26 Misc.2d 57.—Child S 124.

N.Y.Sup.App.Term 1949. Legal services rendered for a wife or minor child are as a matter of law "necessaries" for which husband or father may be held liable.—Cohen v. Kosch, 93 N.Y.S.2d 832, 196 Misc. 1057.—Child S 124; Hus & W 19(18).

N.Y.Sup.App.Term 1946. Legal services rendered to an infant, at her request, for her protection in connection with prosecution for criminal offense, are in nature of "necessaries" for which father, under appropriate conditions, may be held responsible.—Griston v. Stousland, 60 N.Y.S.2d 118, 186 Misc. 201.—Child S 124.

N.Y.Sup.App.Term 1946. Although 17-year old girl charged with a criminal offense had absolute right to dismiss attorney furnished by her father and to accept one designated by court, or to retain an attorney of her own choice, such action on her part, in and of itself, did not render father liable for services of an attorney chosen by her as "necessaries."—Griston v. Stousland, 60 N.Y.S.2d 118, 186 Misc. 201.—Child S 124.

N.Y.Sup.App.Term 1943. In action for "necessaries" furnished wife, recovery is not permitted against husband for services of detective employed by wife to obtain evidence against her husband for an action of absolute divorce even though as a result wife later obtained divorce.—Shorten v. Schoenbrun, 42 N.Y.S.2d 101.—Hus & W 19(14).

N.Y.Sup.App.Term 1941. Where evidence showed that separation agreement made inadequate provision for wife's support, the husband was liable for services of physician, rendered for wife, since such services were "necessaries" for the payment of which the physician did not look solely to the credit of the wife.—Hillman v. Boehm, 29 N.Y.S.2d 199.—Hus & W 19(15).

N.Y.Sup.App.Term 1939. Where judgment in separation action established that defendant's wife was not justified in seeking separation, and wife's attorney failed to show that wife was justified in living apart from defendant, attorney was not entitled to recovery for his services to wife on ground that such services were "necessaries" for which

defendant was liable.—*Schussheim v. Cohen*, 16 N.Y.S.2d 989.—*Hus & W* 19(18).

N.Y.Sup.App.Term 1920. Porch and window awnings for the family residence, which were ordered by the wife, will be deemed “necessaries.”—*C.A. Brandt Co. v. Engelhardt*, 182 N.Y.S. 618.—*Hus & W* 19(14).

N.Y.Sup.App.Term 1920. A husband is liable in law for legal services rendered his wife for her protection and support; such services being “necessaries.”—*Posner v. Stone*, 182 N.Y.S. 564.—*Divorce* 197.

N.Y.Sup.App.Term 1911. What are included in the word “necessaries,” when applied to goods purchased by a wife, and for which it is sought to charge the husband, are such articles of utility as are suitable to maintain her according to the degree and estate of her husband and his ability to pay.—*Schwartz v. Cohn*, 129 N.Y.S. 464.—*Hus & W* 19(14).

N.Y.Sup.App.Term 1906. The services of a nurse during confinement are “necessaries” for which a husband is liable, although he is living apart from his wife and paying her a certain sum per week.—*Schneider v. Rosenbaum*, 101 N.Y.S. 529, 52 Misc. 143.

N.Y.Sup.App.Term 1905. Groceries bought by a wife are “necessaries” which the husband is bound to furnish or pay for.—*Fischer v. Brady*, 94 N.Y.S. 25, 47 Misc. 401.

N.Y.Sur. 1952. Generally, services rendered to wife to compel the fulfilment of husband’s marital obligations are “necessaries” for which the husband or his estate are liable.—*In re Freundlich’s Estate*, 112 N.Y.S.2d 653.—*Ex & Ad* 219.8; *Hus & W* 19(18).

N.Y.Sur. 1952. Legal services rendered to wife after husband’s death are not “necessaries” for which his estate is liable.—*In re Freundlich’s Estate*, 112 N.Y.S.2d 653.—*Ex & Ad* 213.5.

N.Y.Sur. 1943. Where, without informing guardian or court clerk of what was transpiring, depository of guardianship funds made loan to enable infant to purchase house, on infant’s promise to repay loan out of guardianship funds on attaining majority, but infant on attaining her majority disaffirmed her agreement and offered to depository all proceeds of loan, the depository was not entitled to enforce claim against guardianship fund on theory that proceeds of loan were used for “necessaries” where infant had suitable living accommodations at time of purchase of house.—*In re Ferguson’s Guardianship*, 41 N.Y.S.2d 862, affirmed *In the Matter of Ferguson*, 46 N.Y.S.2d 222, 266 A.D. 1016.—*Infants* 50.

N.Y.Sur. 1943. The expenditures for hospital services rendered wife, being “necessaries,” would not ordinarily be a proper charge against estate of deceased wife and husband would therefore be primarily liable therefor.—*In re Koretzky’s Estate*, 40 N.Y.S.2d 928, 180 Misc. 108.—*Hus & W* 19(16), 151(7).

N.Y.Sur. 1936. The expenses of the last sickness of a married woman living with her husband have been classed as “necessaries.”—*In re Burt’s Will*, 289 N.Y.S. 875, 160 Misc. 218, modified 3 N.Y.S.2d 70, 254 A.D. 584.

N.Y.Sur. 1934. Term “necessaries,” as used in law relating to liability of infants therefor, is relative and somewhat flexible term, except when applied to things obviously requisite for maintenance of existence, and depends on infant’s social position and situation in life as well as on his and his parents’ fortune, and denotes that infant must have actual need for useful and beneficial articles furnished in supplying infant’s personal needs of body or mind. *Surrogate’s Court Act*, §§ 40, 194.—*In re Taylor*, 275 N.Y.S. 934, 153 Misc. 673.—*Infants* 50.

N.Y.Co.Ct. 1977. Where there was no showing that wife’s abortion was necessary because of illness which for medical reasons dictated the surgical procedure, and where, instead, abortion was performed as a birth preventive measure, medical clinic did not meet its burden of establishing that services rendered to wife constituted “necessaries,” and, thus, husband was not liable for payment for his wife’s abortion. *CPLR* 3212.—*Clinic v. Nelson R.*, 394 N.Y.S.2d 118, 90 Misc.2d 253.—*Hus & W* 19(15).

N.Y.Co.Ct. 1969. Legal services rendered in habeas corpus proceeding wherein former wife and mother sought to alter custody arrangements previously agreed upon by mother and father in separation agreement were “necessaries” for child for which parents were responsible. *Domestic Relations Law* §§ 237, 240.—*Errico v. Manville*, 299 N.Y.S.2d 914, 59 Misc.2d 549.—*Child* S 124.

N.Y.Co.Ct. 1965. Refrigerator and washer were “necessaries” and, accordingly, husband was bound by installment contract therefor signed by wife.—*General Elec. Credit Corp. v. Fox*, 261 N.Y.S.2d 947, 47 Misc.2d 164.—*Hus & W* 19(14).

N.Y.Co.Ct. 1941. Word “support” within statute, providing for order requiring husband to pay sum necessary for wife’s support, during pendency of divorce or separation action, means the supply of “necessaries”, which are not limited to food, clothing and a habitation. *Civil Practice Act*, § 1169.—*Boller v. Crider*, 31 N.Y.S.2d 987.—*Divorce* 209.

N.Y.Co.Ct. 1939. A husband was liable for “necessaries” consisting of hospital services furnished to his wife while wife was living apart from husband by mutual consent where it did not appear that obligation of husband to support wife had been altered by agreement, unless plaintiff extended its credit to wife.—*Rochester General Hospital v. Ingstrum*, 13 N.Y.S.2d 792, 171 Misc. 288.—*Hus & W* 19(6).

N.Y.Co.Ct. 1907. A claim for rent is not one for “necessaries,” within the meaning of *Code Civ. Proc.* § 1391, as amended by *Laws* 1905, p. 370, c. 175, providing that where a judgment has been recovered wholly for necessities sold, and execution thereon has been returned unsatisfied, and no property can be found, the creditor may in certain

cases have an execution against the wages of the debtor.—*Beard v. Covill*, 102 N.Y.S. 204, 38 Civ. Proc.Rep. 24.—Exemp 70.

N.Y.Mun.Ct. 1952. “Necessaries” which are purchased by wife, and for which husband will be held liable, are those items and supplies which are needed for wife’s maintenance and existence, and her personal use, suitable to her condition in life.—*Gimbel Bros. v. Steinman*, 114 N.Y.S.2d 603, 202 Misc. 858.—Hus & W 19(14).

N.Y.Mun.Ct. 1952. Gloves, nightgowns, pajamas, shoes, shirts, and hat purchased by wife, were “necessaries” for which husband was liable to seller.—*Gimbel Bros. v. Steinman*, 114 N.Y.S.2d 603, 202 Misc. 858.—Hus & W 19(14).

N.Y.Mun.Ct. 1952. Where it appeared that lamps, spread, and blanket robe purchased by wife were not for her personal use but were for her rooming house business, which she owned personally, they were not “necessaries” and husband was not liable therefor.—*Gimbel Bros. v. Steinman*, 114 N.Y.S.2d 603, 202 Misc. 858.—Hus & W 19(14).

N.Y.Mun.Ct. 1937. Where a father fails to support his child and fails and refuses to give it a home, food, clothing, education, and medical attendance, such “necessaries” may be furnished by others, including strangers, and the father will be held liable for them, since a child is entitled to support and maintenance by its father.—*Krieger v. Krieger*, 296 N.Y.S. 261, 162 Misc. 930.—Child S 55.

N.Y.Mun.Ct. 1936. Medical services are “necessaries” as respects liability of husband for such services rendered to wife.—*Daly’s Astoria Sanatorium v. Blair*, 291 N.Y.S. 1006, 161 Misc. 716.—Hus & W 19(15).

N.Y.Mun.Ct. 1934. Attorney’s services in moving to punish former husband for contempt because of nonpayment of money awarded by divorce decree for children’s support held “necessaries,” for which husband was liable.—*Elstein v. Saxen*, 276 N.Y.S. 69, 154 Misc. 331.—Child S 603.

N.Y.City Civ.Ct. 1973. Legal efforts which were rendered by plaintiff on behalf of defendant’s infant daughter at a time when she was under custody of her mother and which were devoted and fairly resourceful constituted “necessaries” and plaintiff would have been able to recover reasonable value thereof, regardless of whether some of his exertions were unsuccessful or whether defendant was divorced from mother, but where present level of defendant’s support obligation as incorporated in separation agreement constituted approximately 20% of defendant’s current net income after taxes, court would not intervene and alter agreement by requiring defendant to compensate plaintiff for value of legal services rendered.—*Felder v. “Rohm”*, 348 N.Y.S.2d 507, 75 Misc.2d 944.—Hus & W 19(8).

N.Y.City Civ.Ct. 1962. Wearing apparel purchased by wife, in absence of any proof to contrary, is classified as “necessaries” as respects husband’s liability for payment.—*Abraham & Straus v. Teller*,

236 N.Y.S.2d 435, 37 Misc.2d 797.—Hus & W 19(14).

N.Y.City Ct. 1959. Services rendered to wife to compel fulfillment of husband’s marital obligations are “necessaries” for which husband is liable, but husband’s motion for reduction of alimony required by judgment of separation cannot be considered affirmative action which defeats or impairs rights of wife under judgment of separation and which would entitle wife’s attorney to maintain an action against husband for attorney’s services in opposing such motion. Civil Practice Act, §§ 1169, 1170.—*Gallin v. Stafford*, 188 N.Y.S.2d 137, 18 Misc.2d 786, reversed 200 N.Y.S.2d 498, 10 A.D.2d 915, appeal granted 203 N.Y.S.2d 1012, 11 A.D.2d 648, affirmed 216 N.Y.S.2d 705, 9 N.Y.2d 894, 175 N.E.2d 832.—Divorce 198; Hus & W 19(18).

N.Y.City Ct. 1951. Food and household items purchased at wife’s direction for household consisting of estranged wife, husband’s two sons by a former marriage and servants, though the amount was large, constituted “necessaries”, in view of husband’s wealth and family standard of living prior to separation, and where husband had not adequately provided for wife following separation, he could not absolve himself from liability for such necessities by notice to store not to give credit to wife for necessities.—*Bloomington Bros. v. Benjamin*, 112 N.Y.S.2d 33, 200 Misc. 1108.—Hus & W 19(9), 19(14).

N.Y.City Ct. 1945. Legal services rendered to wife in proceedings to establish her rights under a separation agreement, which husband attempted to avoid by seeking a divorce in another state, were “necessaries” for which husband was liable.—*Berry v. Jaworski*, 58 N.Y.S.2d 18, reversed 67 N.Y.S.2d 400, 187 Misc. 481, appeal granted 64 N.Y.S.2d 908, 271 A.D. 754, affirmed 68 N.Y.S.2d 432, 271 A.D. 932.—Hus & W 19(18).

N.Y.City Ct. 1932. Where wife is compelled to institute legal proceeding because of husband’s failure to discharge common-law duties, services rendered by attorneys are “necessaries” for which husband is liable.—*Sheer v. Foley*, 260 N.Y.S. 252, 145 Misc. 819.—Hus & W 19(18).

N.Y.City Ct. 1923. “Necessaries” consist not merely of food, shelter, or raiment, but may include whatever is necessary for the protection and support of the wife to preserve health, promote comfort of body or mind, or relieve distress.—*Lanyon’s Detective Agency v. Cochrane*, 199 N.Y.S. 482.—Hus & W 19(14).

N.Y.City Ct. 1893. A husband is not liable for legal services rendered his wife in a proceeding brought against him by the people for failure on his part to support her, on the ground that such services were “necessaries.”—*McQuhae v. Rey*, 51 N.Y.St.Rep. 166, 22 N.Y.S. 175, 2 Misc. 476, affirmed 52 N.Y.St.Rep. 484, 23 N.Y.S. 16, 3 Misc. 550.

N.Y.Dist.Ct. 1972. Contact lenses ordered by emancipated 19-year-old client who disaffirmed contract after optometrist had ordered the lenses

and incurred an indebtedness of \$110 were "necessaries," and for purpose of doing substantial justice between the parties optometrist would be granted judgment against client for \$150.—*Cidis v. White*, 336 N.Y.S.2d 362, 71 Misc.2d 481.—*Infants* 50.

N.Y. Dist. Ct. 1966. Phrase "necessaries," as used in statute precluding an infant from disaffirming contract for necessities, does not possess a fixed interpretation but must be measured against both infant's standard of living and ability and willingness of his guardian, if he has one, to supply needed services or articles. Uniform Commercial Code, § 1-103.—*Fisher v. Cattani*, 278 N.Y.S.2d 420, 53 Misc.2d 221.—*Infants* 50.

N.Y. Fam. Ct. 1970. "Necessaries" to be considered in child support provision are not limited to food, clothing, habitation and education, but also include, among other things, the right of counsel to enforce child's legal right. Family Ct. Act, §§ 461, 466(c).—*Kern v. Kern*, 319 N.Y.S.2d 178, 65 Misc.2d 765.—*Child* S 124.

N.C. 1942. "Necessaries" for which an infant may bind himself include meat, drink, apparel, schooling, and nursing while sick.—*Barger v. M. & J. Finance Corp.*, 18 S.E.2d 826, 221 N.C. 64.

N.C. 1927. Candies, tobacco, and soft drinks furnished highway contractor held not "necessaries" covered by contractor's bond.—*Overman & Co. v. Maryland Cas. Co.*, 136 S.E. 250, 193 N.C. 86.—*High* 113(5); *Pub Contr* 49.

N.C. App. 1984. Doctrine of necessities is used to hold husband liable to merchants and other outside parties who have furnished "necessaries" to wife, that is, those things which are essential to wife's health and comfort according to rank and fortune of her husband.—*Presbyterian Hosp. v. McCartha*, 310 S.E.2d 409, 66 N.C. App. 177, review allowed in part 319 S.E.2d 273, 311 N.C. 403, on reconsideration 321 S.E.2d 143, 311 N.C. 762, review dismissed 322 S.E.2d 761, 312 N.C. 485.—*Hus & W* 19(1).

Ohio 1969. Legal services rendered to wife, even in matter adverse to husband's interest, may represent "necessaries" for wife's support, so that reasonable value thereof may be recovered from husband. R.C. § 3103.03.—*Wolf v. Friedman*, 253 N.E.2d 761, 20 Ohio St.2d 49, 49 O.O.2d 306.—*Hus & W* 19(18).

Ohio 1967. "Necessaries" as used in statute providing that husband must support himself, his wife and his minor children and if he neglects to support, any other person may supply necessities and recover reasonable value thereof from the husband includes reasonable allowance for expense money to employ services of an attorney to prosecute or defend an action concerning enforcement of duty of divorced father, within reasonable limits, to support his minor children. R.C. §§ 3103.03, 3109.05.—*Blum v. Blum*, 223 N.E.2d 819, 9 Ohio St.2d 92, 38 O.O.2d 224.—*Hus & W* 19(18).

Ohio App. 2 Dist. 1959. A college education is not included among the "necessaries" which a parent is legally required to furnish a child.—*Ford v.*

Ford, 167 N.E.2d 787, 109 Ohio App. 495, 12 O.O.2d 67.—*Child* S 119.

Ohio App. 3 Dist. 1989. Expenses attributable to birth of child are "necessaries" which are included in father's duty of support of minor child; father's duty of support includes obligation to pay pregnancy and confinement expenses of mother attributable to birth of child. R.C. §§ 3107.07(B), 3111.13, 3111.13(C).—*In re Adoption of Youngpetter*, 583 N.E.2d 360, 65 Ohio App.3d 172.—*Child* S 113.

Ohio App. 6 Dist. 1951. The term "necessaries" within statute permitting third person to recover from husband for necessities provided the wife, means such food, medicines, clothing, shelter, or personal services as are usually considered reasonably essential for preservation and enjoyment of life. Gen.Code, § 8003.—*Smith v. Sutter*, 106 N.E.2d 658, 90 Ohio App. 320, 47 O.O. 427.—*Hus & W* 19(14).

Ohio App. 6 Dist. 1951. As to a wife, the term "necessaries" is not confined to items necessary to sustain life but includes such articles and services as are suitable to maintain the wife according to position and condition of life and means of husband, but the term does not include extravagances, luxuries, or expeditions for pleasure and personal enjoyment. Gen.Code, § 8003.—*Smith v. Sutter*, 106 N.E.2d 658, 90 Ohio App. 320, 47 O.O. 427.—*Hus & W* 19(14).

Ohio Mun. 1995. To maintain action on contract for necessities made with minor, transaction must be fair and reasonable, made in good faith by plaintiff, and without knowledge of defendant's lack of capacity to contract; "necessaries" are defined as food, medicine, clothing, shelter or personal services usually considered reasonably essential for preservation and enjoyment of life.—*Parkwood OB/GYN Inc. v. Hess*, 650 N.E.2d 533, 70 Ohio Misc.2d 32.—*Infants* 50.

Ohio Mun. 1984. Even if R.C. 3103.03, governing responsibility of a father to provide necessities for his minor child, were to apply to minor's action against her father to require him to pay charges she made on his credit card, or if a common-law right to such recovery existed, items purchased by minor were not "necessaries," where retail price for such items totaled \$1,166.22, the items were purchased within an approximate period of four weeks, where two items were listed on the sales slips as men's furnishings, and one was for beauty treatment.—*Fifth Third Bank/Visa v. Gilbert*, 478 N.E.2d 1324, 17 Ohio Misc.2d 14, 17 O.B.R. 406.—*Child* S 100.

Okla. 1972. Under statute making it husband's duty to furnish "necessaries" to his wife, husband may be required under proper circumstances to pay for expenses of hospital care and treatment of wife who has been admitted as a patient at a state institution, and hence his estate is liable for such expenses incurred during his lifetime. 32 O.S.1971, § 10; 43A O.S.1971, § 111.—*State ex rel. Central State Griffin Memorial Hospital v. Reed*, 493 P.2d 815, 1972 OK 14.—*Ex & Ad* 219.8; *Hus & W* 19(15).

Okla. 1971. "Necessaries" for which an infant is liable has no exact definition; rather it is a relative, somewhat flexible term, depending upon infant's social position, fortune and situation in life or upon other circumstances as determined from particular facts and circumstances of each case, and is not confined to what is required for bare subsistence.—*Daubert v. Mosley*, 487 P.2d 353, 56 A.L.R.3d 1328, 1971 OK 90.—Infants 50.

Okla. 1939. "Necessaries" supplied to wife, the reasonable value of which may be recovered from husband, are those things suitable to rank and condition of husband, including not only articles of food or clothing required to sustain life or preserve decency, but such articles as are suitable to maintain the wife according to the estate and degree or rank of her husband. 32 Okl.St. Ann. § 3, 10.—*Anderson v. Neiman-Marcus Co.*, 95 P.2d 584, 185 Okla. 568, 1939 OK 371.—Hus & W 19(14).

Okla. 1935. "Necessaries" furnished to wife, for which husband is liable, include generally those things suitable to husband's rank and condition in life which naturally and reasonably tend to relieve distress or materially to promote comfort of body or mind. St.1931, § 1660, 32 Okl.St. Ann. § 10.—*Schiefer v. Wilson*, 42 P.2d 263, 171 Okla. 119, 1935 OK 248.—Hus & W 19(14).

Okla. 1928. Term "necessaries" is not confined to food or clothing, but includes articles suitable to maintain wife according to husband's station. Comp.St.1921, § 6614, 32 Okl.St. Ann. § 10.—*Labadie v. Henry*, 270 P. 57, 132 Okla. 252, 1928 OK 526, 60 A.L.R. 1183.—Hus & W 19(14).

Okla. 1923. Under the language of 32 Okl.St. Ann. § 10, Rev.Laws 1910, § 3358, attorneys' services to a wife in a divorce action cannot be classed as "necessaries" for which the husband will be held liable, because not "articles necessary for her support."—*Rogers v. Daniel*, 217 P. 881, 92 Okla. 47, 1923 OK 588.

Okla. 1917. Attorney's fees for services rendered in behalf of the estate of a minor are not "necessaries" within Rev.Laws 1910, § 886, 15 Okl. St. Ann. § 20, and a claim therefor may be disaffirmed by the minor.—*Watts v. Houston*, 165 P. 128, 65 Okla. 151, 1917 OK 231.—Infants 50.

Okla.Terr. 1892. A husband is never liable for agreements made by a wife without his consent, unless the circumstances are such as to raise the presumption or implication that the wife acts under his authority; and the power of the wife to bind a husband on contract is based on the ground of agency, she having no inherent power as a wife to make a contract, even for necessities, binding on him, so that it must be made to appear that the contract was made with his assent, or that it was for necessities. Medical attendance upon one, not a member of or dependent on a family for support, cannot be classed as "necessaries," and the master is not bound to provide medical attendance for an ordinary hired servant unless he stipulates for it in the contract of hiring. The term "necessaries" means all such things as are proper and requisite for the sustenance of man, and embraces food,

clothing, medicine, and habitation, and, to hold the husband liable, these provisions must be consistent with his condition and estate.—*Baker v. Witten*, 30 P. 491, 1 Okla. 160, 1892 OK 7.

Okla.Civ.App. Div. 3 1998. The term "necessaries," as used with respect to the doctrine of necessities, means all such things as are proper and requisite for the sustenance of man, embracing food, clothing, medicine, and habitation, and must be consistent with the husband's condition and estate.—*Account Specialists and Credit Collections, Inc. v. Jackman*, 970 P.2d 202, 1998 OK CIV APP 175.—Hus & W 19(14).

Or. 1941. A good common school education, at the least, is one of the "necessaries" for an infant.—*Jackman v. Short*, 109 P.2d 860, 165 Or. 626, 133 A.L.R. 887.

Pa.Super. 1941. Parents' dependency on son, to entitle them to workmen's compensation, need not be "dependency" to great or considerable degree, though dependency must be actual, question being whether son's contributions were needed to provide parents with some of ordinary necessities of life suitable to persons in their class. 77 P.S. § 561. The word "necessaries" has no hard and fast meaning, but varies with the accustomed manner of living of the claimants.—*Smitti v. Roth Cadillac Co.*, 21 A.2d 127, 145 Pa.Super. 292.

Pa.Super. 1934. In determining parents' dependency on son at time of son's death, taxes, insurance, repairs, and mortgage interest on house were proper items of family expense, and son's contributions needed for such purposes were contributions to ordinary "necessaries" of parents.—*Ackerson v. Clair R. Quereau, Inc.*, 172 A. 171, 113 Pa.Super. 52.—Work Comp 477.

Pa.Super. 1934. Parents' dependency on son to entitle them to compensation need not be "dependency" to great or considerable degree, though dependency must be actual; question being whether son's contributions were needed to provide parents with some of ordinary necessities of life suitable to persons in their class. 77 P.S. § 561. The word "necessaries" has no hard and fast meaning, but varies with the accustomed manner of living of the claimants.—*Zedalis v. Jeddo-Highland Coal Co.*, 172 A. 169, 113 Pa.Super. 49.

R.I. 1902. The word "necessaries," is a relative term, and is not limited to those things which are indispensable to the infant's personal support and comfort. Such an education and training as will fit one for the ordinary duties of life in the sphere in which he moves, and enable him to earn a respectable and honest living in his chosen vocation, should be so classed.—*Cory v. Cook*, 53 A. 315, 24 R.I. 421.

R.I. 1902. An action for damages for assault was successfully prosecuted by an attorney for a 17 year old minor at the instance of her father as next friend. After judgment the minor attempted to enter into an advantageous compromise of the claim, but by the attorney's efforts the full amount of the claim was collected. Held, that the services of

the attorney were "necessaries."—*Crafts v. Carr*, 53 A. 275, 24 R.I. 397, 96 Am.St.Rep. 721, 60 L.R.A. 128.

S.C. 1933. Fertilizer sold to minor for benefit of father held not "necessaries" so as to preclude defense of infancy to mortgage given therefor during minority. Code 1942, § 7048.—*Virginia-Carolina Chemical Corp. v. Chandler*, 167 S.E. 663, 168 S.C. 425.—*Infants* 26.

S.D. 1928. Groceries, cooking materials, soap, and washing and cleansing compounds used in boarding camp for workmen held within highway contractor's bond; "necessaries."—*March v. Butler*, 220 N.W. 461, 53 S.D. 170.—*High* 113(5).

S.D. 1928. Snuff, pipes, candy, and similar items furnished boarding camp for workmen held not within highway contractor's bond; "necessaries."—*March v. Butler*, 220 N.W. 461, 53 S.D. 170.—*High* 113(5).

S.D. 1908. Attorney's services in bringing an action of divorce for a wife are not "necessaries," within the meaning of a statute making a husband liable to a person furnishing his wife articles necessary for her support.—*Sears v. Swenson*, 115 N.W. 519, 22 S.D. 74.

Tenn. 1930. Physician's emergency services are "necessaries" within class for which infant may bind himself.—*Foster v. Adcock*, 30 S.W.2d 239, 161 Tenn. 217, 70 A.L.R. 569.—*Infants* 50.

Tex. 1891. "Necessaries" are usually food, lodging, wearing apparel, medicine, medical attendance, and the means of an education. Such is the more rigid rule of the common law. But there are cases which recognize that fees of attorneys for services rendered infants may under some circumstances be treated as necessities, for the payment of which the law will imply a contract.—*Searcy v. Hunter*, 17 S.W. 372, 81 Tex. 644, 26 Am.St.Rep. 837.

Tex.Com.App. 1924. Default judgment against married woman for fuel oil to be used for drilling an oil well was subject to be vacated as being based on a void contract, the oil not being "necessaries."—*Taylor v. Hustead & Tucker*, 257 S.W. 232.—*Hus & W* 151(5).

Tex.Civ.App.—Fort Worth 1975. In suit for enforcement of child support agreement which was part of divorce judgment rendered in Germany, attorney's fees for plaintiff were regarded as "necessaries" to defendant's minor child and plaintiff was entitled to an award for a reasonable amount therefor as part of judgment rendered in case.—*Uhl v. Uhl*, 524 S.W.2d 534.—*Divorce* 222.

Tex.Civ.App.—Fort Worth 1949. When the wife in good faith prosecutes or defends a suit for divorce, she is entitled to recover attorney's fees, predicated upon ground that they are for "necessaries" for the protection and preservation of herself and estate. *Vernon's Ann.Civ.St. art. 4629*.—*Robertson v. Robertson*, 217 S.W.2d 132.—*Divorce* 224.

Tex.Civ.App.—Fort Worth 1949. Wife who in good faith defended suit for divorce, was entitled to recover attorney's fees on ground that they were

"necessaries" regardless of whether she had property sufficient to pay attorney's fees. *Vernon's Ann.Civ.St. art. 4629*.—*Robertson v. Robertson*, 217 S.W.2d 132.—*Divorce* 224.

Tex.Civ.App.—Fort Worth 1948. Attorney's fees are recoverable in wife's suit for divorce as "necessaries" for which husband is responsible under statute. *Rev.St.1925, art. 4620*.—*Hodges v. Hodges*, 207 S.W.2d 943.—*Divorce* 221.

Tex.Civ.App.—Fort Worth 1939. The recovery of attorney's fees by wife in divorce proceedings is in the nature of a claim for "necessaries" for which the husband is liable, but that item cannot properly be classed as "cost."—*Robbins v. Robbins*, 125 S.W.2d 666.—*Divorce* 221.

Tex.Civ.App.—Austin 1948. Attorney's fees incurred by a wife in a divorce suit are "necessaries" within meaning of statute authorizing a wife to contract for "necessaries" furnished her or her children. *Vernon's Ann.Civ.St. art. 4623*.—*Brook v. Morriss, Morriss & Boatwright*, 212 S.W.2d 257.—*Hus & W* 19(18).

Tex.Civ.App.—Austin 1934. Services as housekeeper and nurse are "necessaries" for use and benefit of wife, for which she has authority to bind her husband by contract.—*Meinen v. Muesse*, 72 S.W.2d 931.—*Hus & W* 19(14).

Tex.Civ.App.—Austin 1920. Attorney cannot recover from married woman for services in prosecuting a divorce suit, not instituted by her in good faith and with probable cause; such services not being a necessary, within Acts 33d Leg., 1913, c. 32, providing that a married woman cannot bind herself by contract, except for the benefit of her separate estate and for "necessaries."—*Yeager v. Bradley*, 226 S.W. 1079, writ dismissed w.o.j.—*Hus & W* 151(5).

Tex.Civ.App.—San Antonio 1922. Under *Rev.St. art. 4624*, *Vernon's Ann.Civ.St. art. 4623*, "necessaries" for which a married woman is liable are not merely such goods or services as are actually and reasonably necessary for her existence, and the separate estate of a married woman was liable for articles of clothing purchased by her which she wore at functions where it was customary and necessary for one in her station in life to wear such articles.—*Ellis v. Emil Blum Co.*, 242 S.W. 1099.—*Hus & W* 151(5).

Tex.Civ.App.—Dallas 1945. In divorce suit, reasonable fees of wife's attorney are "necessaries" for which husband is held liable.—*Roberts v. Roberts*, 193 S.W.2d 707, certified question answered 192 S.W.2d 774, 144 Tex. 603.—*Divorce* 197.

Tex.Civ.App.—Dallas 1935. Term "necessaries," as regards wife's liability for indebtedness for herself or children so as to constitute a charge on her separate estate, is used to designate such things as are suited to wife's and children's condition and station in life, their needs and wants, in so far as ability of parties will permit.—*Rice v. Mercantile Bank & Trust Co. of Texas*, 86 S.W.2d 54.

Tex.Civ.App.—Dallas 1924. A fee agreed to be paid by a wife permanently separated from her husband for necessary legal services rendered her son, jailed under charges of rape and kidnapping, to enable him to procure bail, *held* one for “necessaries,” notwithstanding that the son was not a minor. Vernon’s Ann.Civ.St.Supp.1922, arts. 4621 and 4624, Vernon’s Ann.Civ.St. arts. 4613, 4614, 4616-4619, 4621, 4622, not restricting a mother’s power to contract for necessities to minors or infants; the term “children” including children of whatever age and whether constituents of the family or not.—Bradley v. Gilliam, 260 S.W. 289.—Hus & W 83.

Tex.Civ.App.—Texarkana 1956. Chinchillas, which were purchased from defendants by minor, were not “necessaries” for minor in regard to his college education, and, therefore, minor would not be precluded, on such ground, from disaffirming the written contracts of purchase and recovering amount he had paid for the chinchillas.—Hogue v. Wilkinson, 291 S.W.2d 750.—Infants 50.

Tex.Civ.App.—Amarillo 1914. A debt due from a wife for commissions for an exchange of her separate property is not for “necessaries,” within Vernon’s Sayles’ Ann.Civ.St.1914, art. 4624, Vernon’s Ann.Civ.St. art. 4623, declaring that neither the separate property of the husband nor the community property other than the personal earnings of the wife and the income from her separate property, shall be subject to the payment of debts contracted by her, except for “necessaries” furnished her or her children, and community property is not liable therefor.—Winkie v. Conatser, 171 S.W. 1017, writ refused.

Tex.Civ.App.—El Paso 1922. A wife has the right to defend and preserve her marital rights, and to that end may employ counsel in divorce proceedings, where defending in good faith, and whether she be successful or not, the attorney fees incurred by her are “necessaries” for which the husband is liable.—Fasken v. Fasken, 260 S.W. 698, certified question answered 260 S.W. 701, 113 Tex. 464.—Divorce 197.

Tex.Civ.App.—Galveston 1939. Clothes and provision for nursing care may constitute “necessaries” within the rule imposing liability upon husband to third party for reasonable value of necessities furnished wife. Vernon’s Ann.Civ.St. art. 4613.—Corbett v. Wade, 124 S.W.2d 889.—Hus & W 19(14).

Vt. 1949. The term “necessaries” as respects the necessity of a minor to disaffirm a contract for necessities before recovering the purchase price thereof is not confined merely to such things as are required for bare subsistence, and includes those things useful, suitable and necessary for the minor’s support.—Russell v. Buck, 68 A.2d 691, 116 Vt. 40.—Infants 72(1).

Vt. 1949. Evidence sustained finding that trucks purchased by a minor which he used for hauling logs for the seller were not “necessaries” so as to require the minor to disaffirm the contract of purchase before suing for the consideration paid where the operation of the trucks was not the only means

of livelihood open to the minor. V.S. § 7855.—Russell v. Buck, 68 A.2d 691, 116 Vt. 40.—Infants 98.

Va. 1912. Insurance is not an article of merchandise or manufacture, or one of the “necessaries” of life, within the laws against engrossing, prohibiting combinations among dealers in merchandise or manufacture or necessities of life.—Harris v. Commonwealth, 73 S.E. 561, 113 Va. 746, 38 L.R.A.N.S. 458, Am. Ann. Cas. 1913E, 597.

Wash. 1926. Duty of father to provide for minor child in custody of another is restricted to “necessaries.”—Esteb v. Esteb, 244 P. 264, 138 Wash. 174, 47 A.L.R. 110, opinion supplemented on rehearing 246 P. 27, 138 Wash. 174.—Child S 100.

Wash.App. Div. 1 1971. Statute imposing civil liability on parental property for expenses of family and education of children is broad enough to include “necessaries” which include necessary medical expense of dependent minor child which it is duty of parent to provide. RCWA 26.16.205.—State v. Williams, 484 P.2d 1167, 4 Wash.App. 908.—Child S 113.

W.Va. 1995. “Necessaries,” for which implied contracts involving infants could traditionally be recognized, generally include food, clothing, shelter and medical services for infant and family; however, determination of what constitutes necessities is mixed question of law and fact to be decided on case-by-case basis.—Statler v. Dodson, 466 S.E.2d 497, 195 W.Va. 646.—Infants 50.

W.Va. 1951. The word “necessaries” consists of whatever naturally and reasonably tends to relieve distress or materially or in some essential particular to promote comfort either of body or mind and in the absolute sense consists of food, clothing, medical attention and a suitable place of residence.—Snyder v. Lane, 65 S.E.2d 483, 135 W.Va. 887.

W.Va. 1905. Articles furnished to an infant for use in business, such as merchandising, farming, or conducting a shop of any kind, are not regarded as “necessaries.”—Wallace v. Leroy, 50 S.E. 243, 57 W.Va. 263, 110 Am.St.Rep. 777.

Wis. 1959. “Necessaries” furnished to a mentally incompetent person are generally considered as consisting of those things reasonably necessary for support, maintenance, care and comfort of insane person according to his status and condition in life but they are not necessarily limited to his actual physical wants. W.S.A. 319.215.—In re Guardianship of Hayes, 98 N.W.2d 430, 8 Wis.2d 32.—Mental H 241, 375.

Wis. 1931. The term “necessaries,” as used in the law relating to the liability of infants therefor, is a relative term, somewhat flexible, except when applied to such things as are obviously requisite for the maintenance of existence, and depends on the social position and situation in life of the infant, as well as upon his own fortune and that of his parents. The particular infant must have an actual need for the articles furnished; not for mere ornament or pleasure. The articles must be useful and

suitable, but they are not necessities merely because useful or beneficial. Concerning the general character of the things furnished, to be necessities the articles must supply the infant's personal needs, either those of his body, or those of his mind. However, the term "necessaries" is not confined to merely such things as are required for a bare subsistence. There is no positive rule by means of which it may be determined what are or what are not necessities, for what may be considered necessary for one infant may not be necessities for another infant whose state is different as to rank, social position, fortune, health, or other circumstances; the question being one to be determined from the particular facts and circumstances of each case.—*Schoenung v. Gallet*, 238 N.W. 852, 206 Wis. 52, 78 A.L.R. 387.

Wis. 1924. Evidence that defendant's daughter was about to graduate from high school, and had no suitable clothes, held to show that a purchase of a coat for \$63.50, a graduation dress for \$29.75, and a slip for \$10.75 were purchases of "necessaries" for which her father was liable.—*Simpson Garment Co. v. Schultz*, 196 N.W. 783, 182 Wis. 506.—Child S 100.

Wis. 1914. The employment by an infant owner of a store building of a janitor for the building did not involve a contract by the infant for "necessaries," and hence he would not be liable for the janitor's torts on that ground.—*Covault v. Nevitt*, 146 N.W. 1115, 157 Wis. 113, 51 L.R.A.N.S. 1092, Am. Ann. Cas. 1916A, 959.—Infants 50.

Wis. 1914. To be "necessaries," articles must supply the infant's personal needs.—*Covault v. Nevitt*, 146 N.W. 1115, 157 Wis. 113, 51 L.R.A.N.S. 1092, Am. Ann. Cas. 1916A, 959.—Infants 50.

Wis. 1911. Artificial teeth made by a dentist for a married woman constituted "necessaries" for which her husband was primarily liable.—*Clark v. Tenneson*, 130 N.W. 895, 146 Wis. 65, 33 L.R.A.N.S. 426, Am. Ann. Cas. 1912C, 141.—Hus & W 19(15).

NECESSARIES DOCTRINE

M.D.N.C. 1996. Under North Carolina law, "necessaries doctrine" provides that child living with its parents cannot be held liable even for necessities unless it be proved that parent was unable or unwilling to furnish child with such clothes, etc., as parent considers necessary.—*Rhodes, Inc. v. Morrow*, 937 F.Supp. 1202.—Infants 50.

N.C. 1996. "Separation exception" to "necessaries doctrine" did not preclude wife's liability to hospital for medical services rendered prior to his death, even though husband and wife had been separated for over two years at time medical services were provided; hospital had no reason to know of separation when medical care was rendered to husband, as wife carried husband to hospital and admitted him, and she did not put hospital on notice of separation at that time.—*Forsyth Memorial Hosp., Inc. v. Chisholm*, 467 S.E.2d 88, 342 N.C. 616.—Hus & W 19(3).

Vt. 1996. Common-law "necessaries doctrine" creates obligation directly between husband and creditor; accordingly, when creditor seeks payment of necessary expenses from wife and equal protection challenge to necessities doctrine arises, creditor is appropriate party to assert husband's rights. U.S.C.A. Const. Amend. 14.—*Medical Center Hosp. of Vermont v. Lorrain*, 675 A.2d 1326, 165 Vt. 12.—Const Law 42.2(2); Hus & W 19(1).

Va.App. 1991. Under "necessaries doctrine," when wife or child obtained necessary goods or services from third party, third party could hold father directly liable for reimbursement of cost of those goods or services; consent of father for dependent to obtain necessities was not required.—*Morris v. Com., Dept. of Social Services, Div. of Support Enforcement Services ex rel. Comptroller of Va. ex rel. Morris*, 408 S.E.2d 588, 13 Va.App. 77.—Child S 55; Hus & W 19(2).

NECESSARIES FOR FAMILY

Tex.Civ.App.—Austin 1933. "Necessaries for family" for which wife may be liable, include rental on family dwelling. *Vernon's Ann.Civ.St. art. 4623*.—*Wadkins v. Dillingham*, 59 S.W.2d 1099.—Hus & W 268(4).

NECESSARIES FURNISHED

Tex.Civ.App.—Austin 1939. A joint and several note executed by husband and wife in part payment of truck which was purchased to enable husband who was unemployed to engage in a business enterprise in order to support himself and family was not executed for "necessaries furnished" for wife who therefore was not personally liable on the note. *Vernon's Ann.Civ.St. arts. 4621, 4623, 4624*.—*Humbles v. Hefley-Stedman Motor Co.*, 127 S.W.2d 515.—Hus & W 268(4).

Tex.Civ.App.—Austin 1939. Where joint and several note executed by husband and wife was not given for "necessaries furnished" for wife, the wife could not be estopped from denying liability on the note by any representations made by her since such representations would not be binding upon the wife. *Vernon's Ann.Civ.St. arts. 4621, 4623, 4624*.—*Humbles v. Hefley-Stedman Motor Co.*, 127 S.W.2d 515.—Hus & W 268(4).

Tex.Civ.App.—Austin 1933. Statute limits contracting power of wife to "necessaries furnished" which imports executed contract in so far as concerns furnishing. *Vernon's Ann.Civ.St. art. 4623*.—*Wadkins v. Dillingham*, 59 S.W.2d 1099.—Hus & W 268(4).

NECESSARIES OF LIFE

Cal.App. 1 Dist. 1937. Where judgment was rendered against husband and wife in action in justice's court on nurse girl's contract of hire, mandamus held not to lie to enforce rider attached to judgment, stating that husband's separate property would not be liable, even if rider was part of judgment and ruling was within issues and not void, since claim was for "necessaries of life" for which husband's separate property was liable.—*Heaton v.*

Justice's Court of Township No. Two, San Mateo County, 64 P.2d 1004, 19 Cal.App.2d 118.—Mand 10.

Ga. 1902. Some courts have sought to draw a distinction between what they term "necessaries" or "necessaries of life" or "prime necessaries," and contracts or agreements with reference to other articles of commerce or merchandise. But this distinction is not well founded. What is at one time a luxury, at another time is a necessity. Things which were considered sufficient to satisfy the description of "necessaries" a few years ago would be considered wholly insufficient now under present conditions of civilization. How useful must a thing become before it enters the catalogue of "necessaries," so that contracts to restrain trade in regard to it, or to foster a monopoly in it, are void? Such distinction is unsound in principle.—Brown v. Jacobs Pharmacy Co. (State Report Title: Brown & Allen v. Jacobs' Pharmacy Co.), 41 S.E. 553, 115 Ga. 429, 90 Am.St.Rep. 126, 57 L.R.A. 547.

N.H. 1961. Fresh meats, baby foods, canned goods and staple food items which are not in the exotic class are other "necessaries of life" within meaning of statute prohibiting sale of merchandise on Lord's Day but excepting milk, bread and other "necessaries of life". RSA 578:4.—Mason v. Town of Salem, 167 A.2d 433, 103 N.H. 166.—Sunday 5.

S.C. 1940. A man must furnish the "necessaries of life" to his wife and minor children dependent upon him for support but he need not expend the same amount upon each, since necessities of life for one may be either more or less dependent upon circumstances than for another, and may include medical attention.—Harris v. Leslie, 12 S.E.2d 538, 195 S.C. 526.—Child S 100, 113; Hus & W 4.

NECESSARILY

CMA 1994. To determine whether offense is lesser included offense, in considering whether offense is "necessarily included" in another by considering whether elements of lesser offense are subset of elements of charged offense, term "necessarily" includes derivative offenses. UCMJ, Arts. 80, 132, 10 U.S.C.A. §§ 880, 932.—U.S. v. Foster, 40 M.J. 140.—Mil Jus 965.1.

Cal.App. 3 Dist. 1913. "Necessarily" means "unavoidably," "indispensably," so that a thing which necessarily must happen may reasonably be said to be certain to happen.—Ryan v. Oakland Gas, Light & Heat Co., 130 P. 693, 21 Cal.App. 14.—Damag 26.

Ind. 1890. In an action for damages for wounding and maiming a valuable horse, the court instructed the jury that the proper measure of damages was the amount which the appellee "necessarily" expended for surgeons to treat the horse. In considering this instruction, the court said: "If the injured party is compelled to pay more than the services are actually worth, it does not lie in the mouth of the person responsible for the injury to complain." The word "necessarily," as used in the instruction given by the court, is defined by

Webster as follows: "In a necessary manner; by necessity; unavoidably; indispensably."—Summers v. Tarney, 24 N.E. 678, 123 Ind. 560.

Mo.App. 1909. The court charged that, if plaintiff was employed by defendant, plaintiff assumed all the dangers "necessarily" incident to such employment, but plaintiff did not assume any dangers arising from or caused by defendant's carelessness and negligence. Held, that "necessarily" meant inevitably, not to be avoided even by the exercise of the highest degree of care, and that the instruction was erroneous as imposing too high a degree of care.—Reickert v. Hammond Packing Co., 118 S.W. 525, 136 Mo.App. 565.—Emp Liab 275.

S.C. 1976. Use of word "necessarily" in disability policy so that insured would be denied recovery unless sickness wholly and continuously disabled him and he was "necessarily and continuously confined within the house" did not call for literal application of language used but rather policy provision described character and extent of insured's illness and would be construed and applied with view to such purpose.—Martin v. Pilot Life Ins. Co., 228 S.E.2d 550, 267 S.C. 388.—Insurance 2555.

Tex. 1888. Rev.St. art. 4170 [Vernon's Ann.Civ. St. art. 6320], relating to public roads, provides that a railroad company "shall have the right to construct across * * * any highway which the route of said railway shall intersect; but such corporation shall restore the * * * highway * * * thus intersected * * * to its former state, or to such state, as not unnecessarily to impair its usefulness," etc. In a charge based upon this statute the court used the word "necessarily" instead of "unnecessarily." Held error.—Dallas & G. Ry. Co. v. Able, 9 S.W. 871, 72 Tex. 150.—R R 114(4).

NECESSARILY AFFECTS THE JUDGMENT

Cal.App. 2 Dist. 1911. West's Ann.Code Civ. Proc. § 1068, provides that a writ of review shall issue only where an inferior tribunal has exceeded its jurisdiction and there is no appeal or other adequate remedy. Section 956 provides that, upon an appeal from a judgment, the court may review the verdict or decision and any intermediate order or decision excepted to which involves the merits or "necessarily affects the judgment," held that, though no appeal lies from an order dismissing or refusing to dismiss an action, an erroneous order denying plaintiff's motion to dismiss the action affects the judgment thereafter rendered on the merits against the plaintiff, so that such order may be reviewed on appeal from the judgment, and hence a writ of review will not lie.—Huntington Park Imp. Co. v. Superior Court of Los Angeles County, 121 P. 701, 17 Cal.App. 692.

NECESSARILY AND REGULARLY ATTENDED

S.D.N.Y. 1957. In policy excluding coverage for disability for which insured is not "necessarily and regularly attended", quoted words must be given their natural meaning.—Dixon v. Pacific Mut Life Ins Co, 151 F.Supp. 106.—Insurance 2556.

NECESSARILY AND SOLELY

Kan. 1908. The requirement of an accident policy that death must have resulted "necessarily and solely" from accidental injury is satisfied, where the injury was the predominating and efficient cause of the death, and that other conditions were set in motion by the injury which may have contributed to the death is immaterial.—*Continental Cas. Co. v. Colvin*, 95 P. 565, 77 Kan. 561.—Insurance 2590(4).

NECESSARILY COMMITTED

Me. 1998. Lesser offense that does require proof of a culpable state of mind is not "necessarily committed" within meaning of lesser included offense statute when a greater offense that does not require proof of a culpable state of mind is committed. 17—A M.R.S.A. § 13-A, subd. 2.—*State v. Boyce*, 718 A.2d 1097, 1998 ME 219, habeas corpus denied *Boyce v. Commissioner*, Maine Dept. of Corrections, 217 F.Supp.2d 108.—Ind & Inf 191(0.5).

NECESSARILY CONFINED

C.A.9 (Wash.) 1958. In action to recover on hospital policy for expenses incurred while insured was confined to licensed nursing home, where testimony showed that insured's confinement was under direction of her doctor which direction was not shown to have been improper or not shown to have resulted from sickness not covered under policy, evidence sustained finding that insured had been "necessarily confined" within meaning of policy.—*Reserve Life Ins. Co. v. Marr*, 254 F.2d 289, certiorari denied 79 S.Ct. 63, 358 U.S. 839, 3 L.Ed.2d 74.—Insurance 2532.

NECESSARILY CONFINED TO BED

La.App.Orleans 1936. The phrase "necessarily confined to bed" means that the insured must be substantially bedridden.—*Lewis v. Liberty Indus. Life Ins. Co.*, 166 So. 143, annulled 170 So. 4, 185 La. 589, 107 A.L.R. 286.

NECESSARILY CONNECTED WITH AND INCIDENTAL TO

La.App.1 Cir. 1957. In malicious prosecution suit, objection to reconventional demand for damages for defamatory and false remarks which prompted defendant's affidavit before justice of the peace for a peace bond was properly overruled where affidavit was basis of plaintiff's suit for the allegedly malicious prosecution so that reconventional demand was "necessarily connected with and incidental to" the main demand as required by statute. LSA-R.S. 14:47, 15:27; Code Prac. art. 375.—*Cox v. Cashio*, 96 So.2d 872.—Set-Off 27(1).

NECESSARILY, CONTINUOUSLY AND ACTUALLY CONFINED WITHIN THE HOUSE

Neb. 1934. Totally disabled insured held not prevented from recovery benefits under health policy for period which insured was "necessarily, continuously and actually confined within the house" because he was taken twice in automobile distance

of few blocks to impart information particularly within his knowledge about business with which he had been connected.—*Mackprang v. National Cas. Co.*, 257 N.W. 248, 127 Neb. 877.—Insurance 2555.

NECESSARILY DECIDED

C.A.1 (R.I.) 1993. As stated in Restatement (Second) of Judgments § 27, issue is "necessarily decided" for purposes of applying doctrine of collateral estoppel if issue was not only actually decided but also was necessary to judgment; extending force of unnecessary finding into different case is risky and possibly unfair.—*Commercial Associates v. Tilcon Gammino, Inc.*, 998 F.2d 1092.—Judgm 724.

Bkrty.S.D.N.Y. 1999. Under New York law, collateral estoppel effect is given to issues "necessarily decided" by default judgment, that is, matters essential to sustain the judgment.—*In re Alicea*, 230 B.R. 492.—Judgm 724.

Bkrty.M.D.Tenn. 1994. For purpose of determining under Tennessee law whether judgment entered against debtor in Tennessee fraud action would have collateral estoppel effect in determining in Bankruptcy Court whether judgment debt came within discharge exceptions for false representations and for use of false financial statements, fraud issues in state court and bankruptcy proceedings were the same and were "necessarily decided" by jury in reaching its fraud verdict against debtor. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A, B).—*In re Bursack*, 163 B.R. 302, on subsequent appeal 65 F.3d 51, 1995 Fed.App. 261P.—Judgm 828.21(2).

Cal.App.2 Dist. 2001. The requirement that the issue was "necessarily decided" in the prior proceeding, as element of issue preclusion, means that the issue was not entirely unnecessary to the judgment in the prior proceeding.—*Castillo v. City of Los Angeles*, 111 Cal.Rptr.2d 870, 92 Cal.App.4th 477, rehearing denied.—Judgm 724.

NECESSARILY DETERMINED

E.D.Wis. 2001. Under Wisconsin law, issue was "necessarily determined" in prior proceeding, for preclusion purposes, where it was essential to judgment.—*Bukowski v. Patel*, 266 B.R. 838.—Judgm 725(1).

Bkrty.D.Conn. 1996. Under Connecticut law, collateral estoppel applies to issue that was actually litigated and necessarily determined in prior action between same parties on different claim; issue is "necessarily determined" if, in absence of determination of issue, judgment could not have been validly rendered.—*In re Roberti*, 201 B.R. 614.—Judgm 724.

Bkrty.D.Conn. 1995. For purposes of applying collateral estoppel under Connecticut law, issue is "necessarily determined" if, in absence of determination of issue, judgment could not have been validly rendered.—*In re Cornell*, 178 B.R. 45.—Judgm 724.

Bkrty.E.D.Mich. 1999. Issue is "necessarily determined" by prior judgment, as required for prior

judgment to be given collateral estoppel effect under Michigan law, if it is essential to that judgment.—In re Allen, 243 B.R. 683.—Judgm 724.

Bkrtcy.E.D.Mich. 1997. Under Michigan law, issue is “necessarily determined” for purposes of collateral estoppel if it is essential to judgment.—In re Waldorf, 206 B.R. 858.—Judgm 724.

Bkrtcy.S.D.N.Y. 2001. Issue is “necessarily determined,” for preclusion purposes under Connecticut law, if judgment could not have been validly rendered absent determination of issue.—In re Scheller, 265 B.R. 39.—Judgm 724.

Conn. 1999. An issue is “necessarily determined,” for collateral estoppel purposes, if, in the absence of a determination of the issue, the judgment could not have been validly rendered.—Dowling v. Finley Associates, Inc., 727 A.2d 1245, 248 Conn. 364.—Judgm 724.

Conn. 1993. Issue is “necessarily determined,” as needed for collateral estoppel to apply, if judgment could not have been validly rendered in absence of determination of issue.—Jackson v. R.G. Whipple, Inc., 627 A.2d 374, 225 Conn. 705, on remand 1994 WL 51172.—Judgm 724.

Conn.App. 2000. Issue is “necessarily determined,” as is required for application of collateral estoppel, if, in absence of a determination of issue, the judgment could not have been validly rendered.—R and R Pool and Patio, Inc. v. Zoning Bd. of Appeals of Town of Ridgefield, 758 A.2d 462, 60 Conn.App. 82, certification granted in part 762 A.2d 909, 255 Conn. 902, reversed 778 A.2d 61, 257 Conn. 456, on subsequent appeal R&R Pool & Patio, Inc. v. Zoning Bd. of Appeals of Town of Ridgefield, 2002 WL 31045944.—Judgm 724.

Conn.App. 2000. Issue is “necessarily determined,” as is required for application of collateral estoppel doctrine, if, in absence of determination of issue, the judgment could not have been validly rendered.—Gladysz v. Planning and Zoning Com’n of Town of Plainville, 750 A.2d 507, 57 Conn.App. 797, certification granted in part 755 A.2d 880, 254 Conn. 904, reversed 773 A.2d 300, 256 Conn. 249.—Judgm 724.

Mich.App. 1994. Issue is “necessarily determined,” as needed for collateral estoppel to apply, if issue is essential to resulting judgment; finding upon which judgment did not depend cannot support collateral estoppel.—Board of County Road Com’rs for County of Eaton v. Schultz, 521 N.W.2d 847, 205 Mich.App. 371.—Judgm 724.

NECESSARILY IMPLIED

Cal.App. 5 Dist. 1992. “Legal necessity” standard implicit in Eminent Domain Law section providing that local public entity may acquire property outside its territorial limits by eminent domain only where that power is expressly granted by statute or “necessarily implied” as an incident of one of its other statutory powers, is not identical to standard of necessity encompassed in other subdivisions of statute; latter provisions require only reasonable necessity under all circumstances of case, not abso-

lute or imperative necessity, and involve determinations that are questions for trier of fact, whereas former involves jurisdictional issue, a question of law to be determined by court. West’s Ann.Cal. C.C.P. §§ 1240.030(a, c), 1240.050.—Kenneth Mebane Ranches v. Superior Court, 12 Cal.Rptr.2d 562, 10 Cal.App.4th 276, review denied.—Em Dom 45.

Miss. 1990. Administrative agencies have only such powers that are expressly granted to them or those “necessarily implied” via their grant of authority, and “necessarily implied” refers to logical necessity and means that no other interpretation is permitted by words of instrument construed.—Mississippi Public Service Com’n v. Columbus & Greenville Ry. Co., 573 So.2d 1343.—Admin Law 305.

Utah 1935. The term “implied” or “implication” often is used in different senses dependent upon subject-matter concerning which it is used, whether in construction of statutes, contracts, or wills, and the like, in some of which the term is used more flexibly than in others. Ordinarily, a fact or thing is implied when it arises out of that which is directly or expressly declared or included or embraced therein or deducible therefrom. The term “necessarily implied” or by necessary implication is more restricted, in that the former term leaves no room to doubt and the latter term in case of construction of instruments means, not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed cannot be supposed. The term does not mean to shut out every other possible or imaginary conclusion and from which there is no possible escape, but means one leading to such a conclusion as, under the circumstances, a reasonable view impels us to take, the contrary of which would be improbable or absurd.—Atlas Acceptance Corporation v. Pratt, 39 P.2d 710, 85 Utah 352.

NECESSARILY IMPLIED POWER

Ill.App. 3 Dist. 1984. “Necessarily implied power” means that which is essential to accomplishment of statute’s declared object and purpose.—Lutheran Social Services of Illinois v. Henry County, 79 Ill.Dec. 907, 464 N.E.2d 811, 124 Ill.App.3d 753.—Statut 185.

NECESSARILY IMPLY

Mass. 1979. Statutory provision, which requires that records of a collector be open to inspection by town auditor or other agent of town at all reasonable times, does not “necessarily imply,” within meaning of statutory provision to effect that public records open to public inspection do not include records “specifically or by necessary implication exempted from disclosure by statute,” that persons other than auditor and agents of town are denied their right to inspect records of tax delinquents. M.G.L.A. c. 4 § 7, subd. 26(a); c. 60 § 8.—Attorney General v. Collector of Lynn, 385 N.E.2d 505, 377 Mass. 151.—Records 55.

N.D. 1942. Judgment, in action to quiet title to realty, that quitclaim deed given to secure repay-

ment of certain notes and relied upon by defendants as constituting a lien on the realty was void because it purported to convey title to grantor's homestead and was not subscribed by grantor's wife, and that grantees had no right, title, interest, or lien in or upon the realty by virtue thereof, did not render the question of liability on the notes "res judicata" in subsequent action between the same parties to recover thereon, since such judgment did not "necessarily imply" that there was no liability on the notes.—Knutson v. Ekren, 5 N.W.2d 74, 72 N.D. 118.—Judgm 725(6).

NECESSARILY INCIDENT

Mo. 1940. "Necessarily incident," within rule providing that if operations within state of foreign corporation are "necessarily incident" to a part of its interstate transportation, then its entire business is interstate so as to exempt it from payment of state franchise tax, means reasonably and fairly incident as a necessary requirement for the complete and efficient use of its facilities in interstate transportation. V.A.M.S. § 564.520.—State v. Shell Pipe Line Corp., 139 S.W.2d 510, 345 Mo. 1222.—Commerce 7(2).

Mo.App. W.D. 1997. Mother's act of forcing her daughter to have sex with mother's boyfriend was not "necessarily incident" to crime within meaning of statutory exception to liability as accessory if offense is so defined that conduct of alleged aider and abettor was necessarily incident to commission or attempt to commit offense; boyfriend could have committed rape without mother's participation. V.A.M.S. § 562.041, subd. 2(2).—Bass v. State, 950 S.W.2d 940.—Rape 19.

NECESSARILY INCLUDED

CMA 1994. To determine whether offense is lesser included offense, in considering whether offense is "necessarily included" in another by considering whether elements of lesser offense are subset of elements of charged offense, term "necessarily" includes derivative offenses. UCMJ, Arts. 80, 132, 10 U.S.C.A. §§ 880, 932.—U.S. v. Foster, 40 M.J. 140.—Mil Jus 965.1.

N.M.Ct.Crim.App. 1994. For offense to be "necessarily included" in greater offense means that whenever greater offense is charged, lesser included offense will always be present, irrespective of how greater offense is pled; in comparing greater and lesser offenses, Court of Criminal Appeals looks only to statutory or generic elements of offense charged.—U.S. v. Oatney, 41 M.J. 619, review gr in part 42 M.J. 204, affirmed 45 M.J. 185.—Mil Jus 965.1.

C.A.D.C. 1966. For a lesser offense to be "necessarily included" in offense charged, within lesser included offense rule, it must be such that the greater offense cannot be committed without also committing the lesser. Fed.Rules Crim.Proc. rule 31(c), 18 U.S.C.A.—Kelly v. U.S., 370 F.2d 227, 125 U.S.App.D.C. 205, certiorari denied 87 S.Ct. 2127, 388 U.S. 913, 18 L.Ed.2d 1355.—Ind & Inf 189(1).

C.A.9 (Cal.) 1969. To be "necessarily included" in the greater offense within meaning of criminal rule providing that defendant may be found guilty of an offense "necessarily included" in the offense charged, the lesser offense must be such that it is impossible to commit the greater without first having committed the lesser and the lesser offense must be included within, but on the facts of the case, not completely encompassed by, the greater offense. Fed.Rules Crim.Proc. rule 31(c), 18 U.S.C.A.—Olais-Castro v. U.S., 416 F.2d 1155, 11 A.L.R. Fed. 165.—Crim Law 795(1.5).

C.A.10 (Colo.) 1961. To be within rule specifying that defendant may be found guilty of offense "necessarily included" in offense charged, lesser offense must be such that it is impossible to commit greater without having first committed the lesser. Fed.Rules Crim.Proc. rule 31(c), 18 U.S.C.A.—Larson v. U.S., 296 F.2d 80.—Ind & Inf 191(0.5).

Alaska App. 1996. If jury could rationally acquit defendant of purported lesser offense but at same time convict defendant of greater offense, then lesser offense is not "necessarily included" in greater.—Petersen v. State, 930 P.2d 414.—Ind & Inf 191(0.5).

Alaska App. 1992. Offense is "necessarily included" in offense charged, so as to require instruction on lesser included offense, when it would be impossible, in context of the case, to convict defendant of charged offense without also convicting of the lesser. Rules Crim.Proc., Rule 31(c).—Willett v. State, 836 P.2d 955.—Crim Law 795(1.5).

Ariz.App. Div. 2 1976. A lesser offense is "necessarily included" in a greater offense if the greater offense cannot be committed without necessarily committing the lesser one.—State v. Belkin, 549 P.2d 608, 26 Ariz.App. 513.—Ind & Inf 189(1).

Cal. 1904. To be "necessarily included" in the offense charged, the lesser offense must not only be part of the greater in fact, but it must be embraced within the legal definition of the greater as a part thereof.—People v. Kerrick, 77 P. 711, 144 Cal. 46.

Cal.App. 1 Dist. 1964. Being under influence of narcotics is not an offense "necessarily included" in offense of possessing narcotics within meaning of statute barring prosecution for an offense necessarily included in offense charged in an accusatory pleading upon which defendant was convicted or acquitted or placed in jeopardy. West's Ann.Pen. Code, § 1023; West's Ann.Health & Safety Code, §§ 11500, 11721.—People v. Gomez, 40 Cal.Rptr. 616, 229 Cal.App.2d 781.—Double J 162.

Cal.App. 1 Dist. 1964. The offense of exhibiting firearm in rude, angry and threatening manner was not an offense "necessarily included" in the offense of resisting a public officer within statute providing that conviction, acquittal or jeopardy is bar to another prosecution for necessarily included offense. West's Ann.Pen.Code, §§ 148, 417, 1023.—People v. Wilson, 37 Cal.Rptr. 42, 224 Cal.App.2d 738.—Double J 164.

Cal.App. 1 Dist. 1928. To be "necessarily included" in offense charged, lesser offense must be

part of greater in fact. West's Ann.Pen.Code, § 1159.—*People v. McGrath*, 271 P. 549, 94 Cal. App. 520.—Ind & Inf 189(1).

Cal.App. 2 Dist. 1965. Offense is "necessarily included" if it is necessarily included under language of accusatory pleading. West's Ann.Pen. Code, § 1159.—*People v. Powell*, 46 Cal.Rptr. 417, 236 Cal.App.2d 884.—Ind & Inf 191(0.5).

Cal.App. 4 Dist. 2001. Offense is "necessarily included" in a greater offense when under the statutory definition of the offenses the greater offense cannot be committed without necessarily committing the lesser.—*People v. Basuta*, 114 Cal. Rptr.2d 285, 94 Cal.App.4th 370, as modified on denial of rehearing.—Crim Law 29(1).

D.C. 1980. Where attempted petit larceny consisted of proof of some but not all of the elements necessary to establish petit larceny, attempted petit larceny was "necessarily included" with petit larceny for purposes of counting previous offenses toward repeat offender sentencing. D.C.C.E. §§ 22-104, 22-2202.—*Leftridge v. U. S.*, 410 A.2d 1388.—Sent & Pun 1260.

Fla.App. 4 Dist. 1973. A "necessarily included" offense of which a defendant may be convicted under accusatory pleading charging another offense is one which is of a necessity proved by proof of the other offense. 33 F.S.A. Rules of Criminal Procedure, rule 3.510.—*Payne v. State*, 275 So.2d 261.—Ind & Inf 191(0.5).

Ind.App. 1 Dist. 1976. A lesser offense is "necessarily included" in the greater offense if it is impossible to commit the greater offense without also having committed the lesser offense. IC 1971, 35-1-39-2.—*Beck v. State*, 348 N.E.2d 409, 169 Ind.App. 364.—Ind & Inf 191(0.5).

Mich.App. 1977. A "necessarily included" offense is one which necessarily must be committed before commission of the greater offense is possible, and the greater offense must include all the legal and factual elements of the "necessarily included" lesser offense.—*People v. Ross*, 252 N.W.2d 526, 73 Mich.App. 588.—Ind & Inf 191(0.5).

Minn. 1986. A lesser offense is "necessarily included" in a greater offense if it is impossible to commit the latter without also committing the former.—*State v. Roden*, 384 N.W.2d 456.—Ind & Inf 191(0.5).

N.M.App. 1977. For a lesser offense to be included within the greater offense, it must be necessarily included; to be "necessarily included," the greater offense could not be committed without also committing the lesser; in determining whether an offense is necessarily included, court looks to the offense charged in the indictment.—*State v. Alderete*, 574 P.2d 592, 91 N.M. 373, certiorari denied 576 P.2d 297, 91 N.M. 491.—Ind & Inf 191(0.5).

N.M.App. 1977. For a lesser offense to be included within the greater it must be necessarily included; to be "necessarily included," the greater offense cannot be committed without also commit-

ting the lesser. Rules of Criminal Procedure, rule 44(d).—*State v. Patterson*, 568 P.2d 261, 90 N.M. 735.—Ind & Inf 191(0.5).

N.M.App. 1975. For a lesser offense to be included within the greater offense, it must be necessarily included and to be "necessarily included," the greater offense cannot be committed without also committing the lesser. Const. art. 2, § 15; Rules of Criminal Procedure, rule 44(d).—*State v. Medina*, 534 P.2d 486, 87 N.M. 394.—Ind & Inf 191(0.5).

Utah 1934. For lesser offense to be "necessarily included" in greater offense, within statute permitting conviction of offenses "necessarily included," in offense charged, lesser offense must be necessary element of greater offense and must of necessity be embraced within legal definition of greater offense and be part thereof. Rev.St.1933, 105-34-6.—*State v. Woolman*, 33 P.2d 640, 84 Utah 23, 93 A.L.R. 723.—Ind & Inf 191(0.5).

Wyo. 1997. Under statutory elements test, one offense is not "necessarily included" in another unless elements of lesser offense are subset of elements of greater offense and where lesser offense requires element not required for greater offense, no lesser included offense instruction is given. Rules Crim.Proc., Rule 31(c).—*Sindelar v. State*, 932 P.2d 730.—Crim Law 795(1); Ind & Inf 191(0.5).

Wyo. 1993. Whether to give lesser included offense instruction is determined under statutory elements test, under which an offense is "necessarily included" in another when elements of lesser offense are subset of elements of charged offense; where lesser offense requires element not required for greater offense, no instruction is to be given. Rules Crim.Proc., Rule 31(c).—*State v. Keffer*, 860 P.2d 1118.—Crim Law 795(1.5).

NECESSARILY INCLUDED IN THE OFFENSE CHARGED

U.S.Mo. 1956. In prosecution for wilful attempt to evade income taxes by filing false and fraudulent tax returns, brought under statute making such attempt a felony, violation of statute making it a misdemeanor to deliver false return with intent to evade tax, which under circumstances of a particular case would involve proof of identical facts, was not an offense "necessarily included in the offense charged" so as to entitle defendant to instruction permitting conviction of lesser offense. Fed.Rules Crim.Proc. rule 31(c), 18 U.S.C.A.; 26 U.S.C.A. (I.R.C.1939) §§ 145(b), 3616(a).—*Berra v. U.S.*, 76 S.Ct. 685, 351 U.S. 131, 100 L.Ed. 1013.—Crim Law 795(2.26).

NECESSARILY INCLUDED LESSER OFFENSE

Fla. 1991. Lesser offense is "necessarily included lesser offense" of charged offense, if all elements of lesser offense are included in charged offense, so that burden of proof as to charged crime cannot be discharged without proving lesser crime.—*Gould v. State*, 577 So.2d 1302.—Ind & Inf 191(0.5).

Mich.App. 2000. "Necessarily included lesser offense" is one that must be committed as part of the greater offense; in other words, it would be impossible to commit the greater offense without first having committed the lesser.—*People v. Reese*, 619 N.W.2d 708, 242 Mich.App. 626, appeal granted in part 631 N.W.2d 343, affirmed 647 N.W.2d 498, 466 Mich. 440.—Ind & Inf 191(1).

Mich.App. 1990. "Necessarily included lesser offense" is offense which contains some of elements of greater offense, but no additional elements; greater offense cannot be committed without committing lesser offense.—*People v. Norman*, 457 N.W.2d 136, 184 Mich.App. 255, appeal denied.—Ind & Inf 191(0.5).

Mich.App. 1985. "Necessarily included lesser offense" is one which has to be committed in order to complete greater offense, i.e., it is impossible to commit greater offense without first having committed lesser offense. (Per Borman, J., with two Judges concurring in the result.)—*People v. Williams*, 374 N.W.2d 158, 143 Mich.App. 574, appeal denied 430 N.W.2d 148, 431 Mich. 878.—Ind & Inf 191(0.5).

Mich.App. 1979. A "necessarily included lesser offense" is one such that it is impossible to commit greater offense without first committing the lesser.—*People v. Vinson*, 287 N.W.2d 274, 93 Mich. App. 483.—Ind & Inf 189(1).

Mich.App. 1977. A "necessarily included lesser offense" is one which must be committed if the greater is committed.—*People v. Thompson*, 257 N.W.2d 268, 76 Mich.App. 705.—Ind & Inf 191(0.5).

NECESSARILY INCLUDED LESSER OFFENSES

Mich. 1997. When reviewing propriety of a requested lesser included offense instruction, Supreme Court first determines if the lesser offense is necessarily included in the greater charge, or if it is a cognate lesser included offense; "necessarily included lesser offenses" must be such that it is impossible to commit the greater without first having committed the lesser; "cognate lesser included offenses" are related and hence "cognate" in the sense that they share several elements, and are of the same class or category, but may contain some elements not found in the higher offense.—*People v. Lemons*, 562 N.W.2d 447, 454 Mich. 234, rehearing denied 564 N.W.2d 901, 454 Mich. 1220.—Crim Law 795(1.5).

Mich. 1996. "Necessarily included lesser offenses," for which it is not necessary to review evidence to determine if it would support conviction of lesser offense in order to decide propriety of requested lesser included offense instruction, must be such that it is impossible to commit greater offense without first having committed the lesser.—*People v. Bailey*, 549 N.W.2d 325, 451 Mich. 657, amended on denial of rehearing 551 N.W.2d 163, 453 Mich. 1204, on remand 554 N.W.2d 391, 218 Mich.App. 645.—Crim Law 795(1.5).

Mich. 1994. "Necessarily included lesser offenses" encompass situations in which it is impossible to commit greater offense without first having committed lesser.—*People v. Hendricks*, 521 N.W.2d 546, 446 Mich. 435, rehearing denied 525 N.W.2d 453, 447 Mich. 1202.—Ind & Inf 189(1).

Mich. 1990. "Necessarily included lesser offenses" are those where defendant cannot commit greater offense without also committing lesser offense.—*People v. Heflin*, 456 N.W.2d 10, 434 Mich. 482, rehearing denied.—Ind & Inf 191(0.5).

Mich.App. 1991. "Necessarily included lesser offenses" are those in which defendant cannot commit greater offense without also committing lesser offense; by contrast, "cognate lesser included offenses" are those in which lesser offense shares some common elements with greater offense, but which may also include some common elements not found in greater offense.—*People v. Sanders*, 476 N.W.2d 157, 190 Mich.App. 389, appeal denied 483 N.W.2d 367, 439 Mich. 970.—Ind & Inf 191(0.5).

NECESSARILY INCLUDED OFFENSE

Cal. 1998. Where an offense cannot be committed without necessarily committing another offense, the latter is a "necessarily included offense."—*People v. Ortega*, 968 P.2d 48, 80 Cal.Rptr.2d 489, 19 Cal.4th 686.—Ind & Inf 191(0.5).

Cal. 1970. Where one offense could not be committed without committing another offense, the latter offense is a "necessarily included offense", and the lesser offense is necessarily included if it is within the offense specifically charged in the accusatory pleading, as distinguished from statutory definition of the crime. West's Ann.Pen.Code, § 1159.—*People v. St. Martin*, 463 P.2d 390, 83 Cal.Rptr. 166, 1 Cal.3d 524.—Ind & Inf 191(0.5).

Cal.App. 1 Dist. 1998. Where offense cannot be committed without necessarily committing another offense, the latter is the "necessarily included offense."—*People v. Bechler*, 71 Cal.Rptr.2d 532, 61 Cal.App.4th 373.—Ind & Inf 191(0.5).

Cal.App. 1 Dist. 1972. "Necessarily included offense" is that which occurs when offense cannot be committed without necessarily committing another offense. West's Ann.Pen.Code, §§ 1140, 1159.—*People v. Doolittle*, 99 Cal.Rptr. 810, 23 Cal.App.3d 14.—Double J 162.

Cal.App. 1 Dist. 1961. Lesser offense is "necessarily included offense" within statute providing that jury may find defendant guilty of any offense, commission of which is "necessarily included" in that with which he is charged, if lesser offense is within offense specifically charged in accusatory pleading, even though its elements are not necessarily in statutory definition of crime. West's Ann. Pen.Code, § 1159.—*People v. Williams*, 11 Cal. Rptr. 142, 189 Cal.App.2d 254.—Ind & Inf 189(1).

Cal.App. 2 Dist. 1969. A "necessarily included offense" is that which occurs when an offense cannot be committed without necessarily committing another offense.—*People v. Harper*, 74 Cal.

Rptr. 859, 269 Cal.App.2d 221.—Ind & Inf 191(0.5).

Cal.App. 2 Dist. 1965. Where offense cannot be committed without necessarily committing another offense, the other offense is a “necessarily included offense”. West’s Ann.Pen. Code, § 1159.—People v. Powell, 46 Cal.Rptr. 417, 236 Cal.App.2d 884.—Ind & Inf 191(0.5).

Cal.App. 2 Dist. 1961. Before lesser offense can be said to constitute necessary part of greater offense, all legal ingredients of corpus delicti of lesser offense must be included in elements of greater offense, and if an element necessary to establish corpus delicti of lesser offense is irrelevant to proof of greater offense, the lesser is not a “necessarily included offense”.—People v. Schumacher, 14 Cal. Rptr. 924, 194 Cal.App.2d 335.—Ind & Inf 191(0.5).

Cal.App. 2 Dist. 1956. If crime charged cannot be committed without committing another offense, such other offense is “necessarily included offense” within statute permitting jury to find one guilty of any offense necessarily included in that with which he is charged. West’s Ann.Pen.Code, § 1159.—People v. Chester, 292 P.2d 573, 138 Cal.App.2d 829.—Ind & Inf 191(0.5).

Cal.App. 2 Dist. 1952. Where one offense cannot be committed without necessarily committing a second, the second offense is a “necessarily included offense”.—People v. Whitlow, 249 P.2d 35, 113 Cal.App.2d 804.—Double J 162.

Cal.App. 3 Dist. 1954. Test of a necessarily included offense is simply that, where an offense cannot be committed without necessarily committing another offense, the other offense is a “necessarily included offense”.—People v. McCree, 275 P.2d 95, 128 Cal.App.2d 196.—Double J 162.

Cal.App. 4 Dist. 2000. Definition of “necessarily included offense”, for purposes of double jeopardy law, is simply that where an offense cannot be committed without necessarily committing another offense, the latter is a necessarily included offense; this is commonly referred to as the “elements test”, which is met when all the elements of the lesser offense are included in the elements of the greater offense. U.S.C.A. Const.Amend. 5; West’s Ann. Cal. Const. Art. 1, § 15.—People v. Scott, 100 Cal.Rptr.2d 70, 83 Cal.App.4th 784, review denied.—Double J 162.

Cal.App. 4 Dist. 1995. Offense is “necessarily included offense” of greater offense, for purpose of determining whether defendant can be convicted of both, where offense cannot be committed without necessarily committing greater offense; determination is conducted in the abstract, without reference to pleadings or facts of particular case.—In re Joseph G., 38 Cal.Rptr.2d 902, 32 Cal.App.4th 1735, review denied.—Crim Law 29(2).

Cal.App. 4 Dist. 1984. If one offense cannot be committed without committing another, the latter is a “necessarily included offense.” West’s Ann.Cal.Penal Code § 1023.—People v. Smith, 203 Cal.Rptr. 196, 155 Cal.App.3d 1103, certiorari de-

nied Smith v. California, 105 S.Ct. 910, 469 U.S. 1160, 83 L.Ed.2d 924, appeal after remand 213 Cal.Rptr. 797, 167 Cal.App.3d 1225.—Ind & Inf 191(0.5).

Cal.App. 4 Dist. 1976. A “necessarily included offense” exists when charged offense, either as defined by statute or as stated in accusatory pleading, cannot be committed without also committing a lesser included offense.—People v. Tatem, 133 Cal. Rptr. 265, 62 Cal.App.3d 655.—Ind & Inf 191(0.5).

Cal.App. 5 Dist. 1968. Test of a “necessarily included offense” is simply that where an offense cannot be committed without necessarily committing another offense, the latter is a “necessarily included offense”.—People v. Butterfield, 65 Cal. Rptr. 765, 258 Cal.App.2d 586.—Ind & Inf 191(0.5).

Cal.App. 5 Dist. 1967. A “necessarily included offense” is that which occurs when offense cannot be committed without necessarily committing another offense.—People v. Lopez, 57 Cal.Rptr. 441, 249 Cal.App.2d 93.—Ind & Inf 191(0.5).

Cal.App. 6 Dist. 2000. Terms “lesser included offense” and “necessarily included offense” are used interchangeably by courts analyzing propriety of giving sua sponte instructions regarding uncharged offenses and determining whether to apply rule against multiple convictions, and are apparently equivalent.—In re Jose H., 92 Cal.Rptr.2d 228, 77 Cal.App.4th 1090, review denied.—Crim Law 29(2), 795(1).

Cal.Super. 1950. When an offense cannot be committed without necessarily committing another offense, the latter is a “necessarily included offense”.—People v. Armstrong, 224 P.2d 490, 100 Cal.App.2d Supp. 852.—Double J 162.

Fla.App. 3 Dist. 1995. “Necessarily included offense” is by definition essential aspect of major offense and one in which burden of proof of major crime cannot be discharged without proving that lesser crime is essential link in chain of evidence; statutory elements of necessarily included offense must be subsumed within statutory elements of charged offense. West’s F.S.A. RCrP Rule 3.510(b).—Nurse v. State, 658 So.2d 1074, review denied 667 So.2d 775.—Ind & Inf 191(0.5).

Fla.App. 5 Dist. 1999. “Necessarily included offense” is one in which the burden of proof of the major crime cannot be discharged, without proving the lesser crime as an essential link in the chain of evidence.—Wilson v. State, 749 So.2d 516, rehearing denied, denial of post-conviction relief affirmed 812 So.2d 452, rehearing denied, dismissed 833 So.2d 775, rehearing denied.—Ind & Inf 189(1), 191(1).

Ind.App. 3 Dist. 1979. Where every essential element of lesser offense was allegedly committed during course of charged crime, each essential element of lesser offense constituted essential element of greater offense as it was allegedly committed, and conviction of charged offense requires proof of element additional to those which comprised the lesser offense, the lesser offense is “necessarily

included offense" for purposes of statute permitting defendants to be found guilty of any offense commission of which is necessarily included in offense with which the defendant is charged in indictment or information. IC 35-1-39-2 (1976 Ed.)—Roddy v. State, 394 N.E.2d 1098, 182 Ind.App. 156.—Ind & Inf 191(0.5).

Mich.App. 1996. "Necessarily included offense" is one that must be committed as part of greater offense; it would be impossible to commit greater offense without first having committed lesser.—People v. Binder, 544 N.W.2d 714, 215 Mich.App. 30, vacated in part, appeal denied in part 554 N.W.2d 906, 453 Mich. 915, denial of habeas corpus affirmed Binder v. Stegall, 198 F.3d 177, 1999 Fed.App. 400P, certiorari denied 120 S.Ct. 2697, 530 U.S. 1247, 147 L.Ed.2d 967.—Ind & Inf 191(0.5).

Nev. 1966. Where offense charged cannot be committed without necessarily committing another offense, the latter is a "necessarily included offense" which may be a lower degree of crime charged or minor offense of the same character. N.R.S. 175.455.—Holland v. State, 414 P.2d 590, 82 Nev. 191.—Ind & Inf 191(0.5).

Nev. 1963. Where offense charged cannot be committed without necessarily committing another offense, the latter is a "necessarily included offense" which may be a lower degree of crime charged or a minor offense of the same character.—State on Behalf of Fogliani v. Carter, 379 P.2d 945, 79 Nev. 146.—Ind & Inf 191(0.5).

Pa.Super. 1997. Crime is "necessarily included offense" only when necessarily included crime must be proven to establish other crime.—Com. v. McCord, 700 A.2d 938.—Ind & Inf 191(0.5).

Wyo. 1994. Court applies statutory elements test when determining whether one statute is necessarily included in another statute; offense is not "necessarily included offense" unless the elements of the lesser offense are a subset of elements of charged offense, but where lesser offense requires element not required for greater offense, no instruction on lesser included offense should be given.—Sandy v. State, 870 P.2d 352.—Ind & Inf 191(0.5).

NECESSARILY INCURRED

D.Md. 1982. Insured's use of drug Amygdalin, also known as laetrile, was not appropriate or reasonably calculated to effectuate the most rapid recovery possible from lymphoma and expenses for laetrile treatment thus were not "necessarily incurred" within meaning of insurance policy.—Free v. Travelers Ins. Co., 551 F.Supp. 554.—Insurance 2511.

Alaska 1981. In regard to a condemnee's claim for costs and attorney fees, the test applicable for each period of time at issue is whether the claimed costs and attorney fees have been necessarily incurred in connection with the condemnation of the property; expenses are "necessarily incurred" if condemnee must undertake them to insure that he

gets a fair price for his land. Rules of Civil Procedure, Rule 72(k)(2, 4).—Martens v. State, Dept. of Highways, 623 P.2d 331.—Em Dom 265(3).

Cal.App. 4 Dist. 1967. Under statute providing for allowance of all necessary expenses incurred in preparing for trial on abandonment of eminent domain proceeding, "necessarily incurred" means, inter alia, incurred before condemnee is served with notice of abandonment and once condemnee knows action is abandoned and there will be no trial he cannot reasonably continue to prepare for trial. West's Ann.Code Civ.Proc. § 1255a.—Orange County Municipal Water Dist. v. Anaheim Union Water Co., 56 Cal.Rptr. 464, 247 Cal.App.2d 761.—Em Dom 265(5).

Iowa 2002. Costs for depositions are not "necessarily incurred" within the meaning of court rule governing costs of taking depositions, unless they are introduced into evidence in whole or in part at trial. I.C.A. Rule 1.716.—EnviroGas, L.P. v. Cedar Rapids/Linn County Solid Waste Agency, 641 N.W.2d 776.—Costs 154.

Iowa 1992. Depositions are "necessarily incurred" for testimony offered and admitted at trial, so that cost of deposition may be taxed against losing party, where depositions are introduced into evidence in whole or in part at trial. Rules Civ. Proc., Rule 157(a).—Coker v. Abell-Howe Co., 491 N.W.2d 143, rehearing denied.—Costs 154.

Mass. 1968. Where, with respect to first admission for which hospital sought reimbursement from city, indigent mother and seriously ill child arrived by ambulance at the hospital without warning, and where the child, consistent with good medical practice, could not have been put out on sidewalk or transferred to another hospital, expense of care of that first admission was "necessarily incurred" within meaning of statute relating to right of hospital to recover from city for care furnished to person in need of public assistance. M.G.L.A. c. 117 § 24A.—Children's Hospital Medical Center v. City of Boston, 236 N.E.2d 878, 354 Mass. 228.—Health 474.

N.Y.Sup. 1898. Expenses incurred by the district attorney in employing expert witnesses of high standing in a murder trial, where the defense of insanity was made, are expenses "necessarily incurred," within a statute providing that expenses necessarily incurred by the district attorney in criminal actions shall be a county charge.—People ex rel. Tripp v. Board of Sup'rs of Cayuga County, 50 N.Y.S. 16, 22 Misc. 616.

Tex.Civ.App. 1946. Services of attorney in preparing interim account filed by guardian of estates of minors as a substitute for annual accounts in answer to petition for guardian's removal were not "necessarily incurred" in management of guardianship estate so as to entitle guardian to allowance of attorney's fees for such services, since guardian's failure to file annual accounts authorized her removal and made it necessary to file account for final settlement thereby making interim account unnecessary. Vernon's Ann.Civ.St. arts. 4224 et

seq., 4312.—In re Higganbotham's Estate, 192 S.W.2d 285.—Guard & W 58.

Tex.Civ.App. 1946. Services of attorney in unsuccessfully contesting petition for removal of guardian of estates of minors were not "necessarily incurred" in management of guardianship estate so as to entitle guardian to allowance of attorney's fee for such services, though guardian retained her position as guardian of persons of the minors. Vernon's Ann.Civ.St. arts. 4309, 4312, 4314 (V.A.T.S. Probate Code, §§ 241, 242, 245).—In re Higganbotham's Estate, 192 S.W.2d 285.—Guard & W 58.

NECESSARILY INCURRED IN CONNECTION WITH SUCH PROPERTY

C.A.4 (Va.) 1974. Payments made by holder of second deed of trust, which had foreclosed lien and purchased the property, to the first lienholder, to prevent foreclosure by the first lienholder were expenses "necessarily incurred in connection with such property" and expenses for which second lienholder was entitled to be reimbursed by government when it sought to redeem the property pursuant to its junior tax lien. 28 U.S.C.A. § 2410(d)(3).—Equity Mortg. Corp. v. Loftus, 504 F.2d 1071.—Mtg 600(3).

NECESSARILY INVOLVE

Pa.Super. 1985. When courts decide under common-law merger doctrine that two crimes "necessarily involve" one another, it does not always mean that all elements of one crime are included in other; it means that on facts of case two crimes were so intimately bound up in same wrongful act that as practical matter proof of one crime necessarily proves other, so that they must be treated as same offense; if same facts show that practically speaking there was only one offense against Commonwealth, then defendant may be punished for only one offense despite number of chargeable offenses arising out of transaction.—Com. v. Williams, 496 A.2d 31, 344 Pa.Super. 108.—Crim Law 30.

NECESSARILY INVOLVED

N.Y.Co.Ct. 1913. Under Laws 1911, c. 651, § 516, making the Children's Court of Buffalo a court of special sessions to hear charges against adults for violating any section of the Penal Law, Consol.Laws 1909, c. 40, amounting to a felony, where such violation must necessarily involve a child, and giving concurrent jurisdiction with the City Court of Buffalo of any charge against an adult of the grade of a misdemeanor which appeared to have in any way contributed to the misdemeanor of a child, or to necessarily involve a child, the court's jurisdiction does not include those cases wherein a child is merely a witness, and not accused as a principal or accessory to a crime, except where the person directly harmed by the criminal act is necessarily a child, and it can try adults for crimes involving children only where the welfare of the child as to health, safety, or morals is immediately or "necessarily involved"; and hence it has no

NECESSARILY LESSER INCLUDED

jurisdiction of an adult criminally charged with violating an ordinance by handling an automobile on a public street in such a careless manner as to inflict personal injuries upon a child.—People v. Zmudzinski, 141 N.Y.S. 542, 80 Misc. 28, 29 N.Y.Crim.R. 338.

NECESSARILY INVOLVE THE OTHER

Pa.Super. 1982. Two requirements must be satisfied before offenses are merged: first, both crimes must derive from same transaction and, second, under the unique facts of the case one crime must necessarily involve the other crime and for one crime to "necessarily involve the other," the essential elements of one crime must be the essential elements of the other crime.—Com. v. McGavin, 451 A.2d 773, 305 Pa.Super. 528.—Crim Law 30.

NECESSARILY JOINED

Fla. 1956. Where action for injuries to child was brought by child, by his mother and next friend, father, who entered the action separately as an individual to recover medical expenses was not within statute authorizing parent to add claims in his own right in action brought by parent and child for injury to child, in respect of which child is "necessarily joined" as coplaintiff, and hence father's claim, which was actually for only \$474 though judgment for \$100,000 was prayed, must be rejected by circuit court as being below minimum jurisdictional amount. F.S.A. § 46.09.—Tucker Bros., Inc. v. Menard, 90 So.2d 908.—Courts 121(2); Infants 75.

NECESSARILY LESSER INCLUDED OFFENSE

C.A.11 (Fla.) 1987. Habeas petitioner's convictions of and sentences for both felony-murder and underlying felony of robbery did not violate double jeopardy, as robbery was not "necessarily lesser-included offense" of felony-murder under Florida law. West's F.S.A. § 775.021(4); F.S.1976 Supp., § 775.021(4).—Fallada v. Dugger, 819 F.2d 1564.—Double J 150(2).

D.Md. 1991. Offense is "necessarily lesser included offense" only if elements of lesser offense are subset of greater offense.—U.S. v. Hipkins, 756 F.Supp. 233.—Ind & Inf 191(0.5).

Fla.App. 1 Dist. 1984. A "necessarily lesser included offense" is one without proof of which it would be legally impossible to prove major crime.—Hall v. State, 460 So.2d 428, review denied 469 So.2d 749.—Ind & Inf 191(0.5).

Fla.App. 5 Dist. 1998. "Necessarily lesser included offense" is one in which the burden of proof of the major crime cannot be discharged, without proving the lesser crime as an essential link in the chain of evidence.—Overway v. State, 718 So.2d 308, appeal after new trial 783 So.2d 373.—Ind & Inf 191(0.5).

Fla.App. 5 Dist. 1985. "Necessarily lesser included offense" is one whose constituent elements are included within the elements of the greater offense; all the statutory elements of a necessarily lesser offense are proved in proving the greater

offense.—*Benjamin v. State*, 462 So.2d 110.—Ind & Inf 191(0.5).

Ind.App. 2 Dist. 1972. A “necessarily lesser included offense” must be such that it is impossible to commit the greater offense as charged in the indictment or affidavit without first having committed the lesser offense; that is, all the elements of the lesser offense must be contained in the greater offense as charged in the indictment or affidavit, and the latter offense must, in addition, contain other elements not part of the lesser offense. IC 1971, 35-1-39-2, *Burns’ Ind.St. Ann.* § 9-1817.—*Carter v. State*, 291 N.E.2d 109, 155 Ind.App. 10.—Ind & Inf 191(0.5).

Mich.App. 1987. A “necessarily lesser included offense” is one which must be committed as part of greater offense, and failure to instruct upon such offense when requested to do so constitutes “error” requiring reversal under “automatic instruction rule.”—*People v. Garrett*, 411 N.W.2d 812, 161 Mich.App. 649, appeal denied.—Crim Law 1173.2(4).

Mich.App. 1986. For purposes of instructions, “necessarily lesser included offense” is one which defendant would have to commit in course of committing greater offense and “cognate offense” is one that shares several elements with and is of same class or category as greater offense but also contains additional elements; offense may be cognate offense if elements shared with greater offense coincide in harm to societal interest to be protected.—*People v. Steele*, 389 N.W.2d 164, 150 Mich. App. 728, appeal granted, reversed 412 N.W.2d 206, 429 Mich. 13.—Crim Law 795(1).

Mich.App. 1984. An offense is a “necessarily lesser included offense” of another if it is impossible to commit the greater offense without also committing the lesser offense; a necessarily lesser included offense is one which emerges when some element or elements of the greater offense are eliminated and, therefore, evidence which supports the greater offense will always support a necessarily lesser included offense.—*People v. Shelton*, 360 N.W.2d 234, 138 Mich.App. 510, rehearing denied.—Ind & Inf 191(0.5).

NECESSARILY OBTAINED

D.D.C. 1993. Court reporters’ fees for transcripts could be recovered as costs by professional football players who prevailed in antitrust class action against National Football League (NFL); transcripts were “necessarily obtained” in preparing for case, within meaning of cost statute, since trial was long and complicated. 28 U.S.C.A. § 1920.—*Brown v. Pro Football, Inc.*, 839 F.Supp. 905, on reconsideration 846 F.Supp. 108, reversed 50 F.3d 1041, 311 U.S.App.D.C. 89, certiorari granted 116 S.Ct. 593, 516 U.S. 1021, 133 L.Ed.2d 513, motion granted 116 S.Ct. 905, 516 U.S. 1109, 133 L.Ed.2d 838, affirmed 116 S.Ct. 2116, 518 U.S. 231, 135 L.Ed.2d 521.—Fed Civ Proc 2740.

D.D.C. 1988. Trial graphics were not “necessarily obtained” by prevailing party in civil case and would not be taxed as costs under federal cost

statute following case’s dismissal; although graphics, which included enlargements of several documents and maps, would have aided jury to understand times and places of events about which they would have heard live testimony at trial, materials were supplementary to, and cumulative of, testimony that would have been offered. Fed.Rules Civ. Proc.Rule 54(d), 28 U.S.C.A.; 28 U.S.C.A. § 1920(4).—*Robertson v. McCloskey*, 121 F.R.D. 131.—Fed Civ Proc 2736.

D.D.C. 1985. A case need not proceed to trial in order for a deposition to be “necessarily obtained” within meaning of statute governing taxation of costs. 28 U.S.C.A. § 1920(2, 4).—*Schmid v. Frosch*, 609 F.Supp. 490.—Fed Civ Proc 2738.

N.D.Ga. 1992. Deposition within proper bounds of discovery is “necessarily obtained” for use in case, and costs will be taxed against nonprevailing party unless that party interposes specific objection that deposition was improperly taken or unduly prolonged. 28 U.S.C.A. § 1920(2); Fed.Rules Civ. Proc.Rule 54(d), 28 U.S.C.A.—*Helms v. Wal-Mart Stores, Inc.*, 808 F.Supp. 1568, affirmed 998 F.2d 1023.—Fed Civ Proc 2738.

D.Kan. 2000. Document copies are not “necessarily obtained” for use in case, within meaning of federal statute governing allowance of such copying charges as taxable cost against nonprevailing party, simply because copies add to convenience of parties and perhaps make the task of trial judge easier; item is “necessarily obtained,” within meaning of costs provision, only when court believes that its procurement was reasonably necessary to prevailing party’s preparation of its case. 28 U.S.C.A. § 1920.—*Pehr v. Rubbermaid, Inc.*, 196 F.R.D. 404.—Fed Civ Proc 2740.

D.Kan. 2000. After defendant successfully defended patent holder’s infringement claims, photocopying expenses which defendant incurred in responding to patent holder’s discovery requests were not taxable as costs, as charges for copies of papers “necessarily obtained” for use in case; because defendant possessed the original documents of which photocopies were made, it did not “obtain” papers, within meaning of federal costs provision. 28 U.S.C.A. § 1920.—*Pehr v. Rubbermaid, Inc.*, 196 F.R.D. 404.—Pat 325.11(6).

S.D.N.Y. 1995. Merely because daily transcripts were used throughout trial did not mean that they were “necessarily obtained” and should be taxed. 28 U.S.C.A. § 1920.—*John G. v. Board of Educ. of Mount Vernon Public Schools*, 891 F.Supp. 122.—Fed Civ Proc 2740.

NECESSARILY OBTAINED FOR USE IN THE CASE

N.D.Cal. 1953. Where copy of daily transcript was a great convenience and aid to plaintiff’s counsel, but was not requested by Court, was not furnished or even offered to Court, and was not used by Court, it was not “necessarily obtained for use in the case” within statute allowing clerk to tax as costs the fees of the court reporter. 28 U.S.C.A.

§ 1920.—Marshall v. Southern Pac. Co., 14 F.R.D. 228.—Fed Civ Proc 2740.

N.D.Ill. 1997. Depositions which civil defendant obtained of plaintiffs' accountants, officers, and/shareholders were "necessarily obtained for use in the case," so that court reporter fees incurred in connection with depositions were properly assessed against plaintiffs as part of defendant's prevailing party costs, given evidence that depositions were reasonably calculated to elicit admissible evidence relevant to plaintiffs' damages and to element of plaintiffs' claim, i.e., their detrimental reliance. 28 U.S.C.A. § 1920; Fed.Rules Civ.Proc.Rule 54(d)(1), 28 U.S.C.A.—Fields v. General Motors Corp., 171 F.R.D. 234.—Fed Civ Proc 2738.

E.D.Mich. 1982. Transcripts of hearings on motion for summary judgment were "necessarily obtained for use in the case" where plaintiff contested entry of order after grant of defendants' motion, and thus court reporter fees were taxable against civil rights plaintiff. 28 U.S.C.A. § 1920; Fed. Rules Civ.Proc. Rule 54(d), 28 U.S.C.A.—Kaimowitz v. Howard, 547 F.Supp. 1345, affirmed 751 F.2d 385.—Civil R 291.

W.D.Mich. 1986. Portions of transcript of other trial received into evidence and considered by district court in reaching its decisions in present case were "necessarily obtained for use in the case," so that plaintiffs were entitled to recover costs they incurred in securing such portions of the transcript. 28 U.S.C.A. § 1920(2).—Bergman v. U.S., 648 F.Supp. 351, affirmed 844 F.2d 353.—U S 147(3.1).

NECESSARILY OBTAINED FOR USE IN THE SUIT

Tex.App.—San Antonio 2001. Transcripts "necessarily obtained for use in the suit," for which costs may be awarded, include depositions and trial testimony used to question witnesses and prepare for argument at trial. V.T.C.A., Civil Practice & Remedies Code § 31.007(b).—Crescendo Investments, Inc. v. Brice, 61 S.W.3d 465, rehearing overruled, and review denied.—Costs 154, 189.

NECESSARILY OBTAINED FOR USE IN THIS CASE

D.Md. 1998. The phrase "necessarily obtained for use in this case" in the statute permitting an award of costs for court reporter's fees and fees for exemplification and copies of papers necessarily obtained for use in the case requires merely that costs be relevant and reasonable and not that they be indispensable to the final outcome. 28 U.S.C.A. § 1920(2, 4).—American Medical Sec., Inc. v. Larsen, 31 F.Supp.2d 502.—Fed Civ Proc 2740.

NECESSARILY OCCUPIED

D.Kan. 1994. Travel to and from trial site by medical doctor, who was plaintiff's expert, "necessarily occupied" doctor within meaning of statute providing that witness shall be paid attendance fee for time "necessarily occupied" in going to and returning from the place of attendance, such that doctor's travel expenses would be taxed as costs

against defendants, as the losing party; doctor had obligations that took precedence over his trial testimony and that could not foreseeably be met in any manner other than to interrupt his testimony and such costs were contemplated by statute. 28 U.S.C.A. §§ 1821(b), 1920.—Griffith v. Mt. Carmel Medical Center, 157 F.R.D. 499.—Fed Civ Proc 2741.

NECESSARILY OR PROPERLY INVOLVED

Okla. 1952. In action for trespass to land in which defense was a superior title in defendants, determination of question of defendants' title was "necessarily or properly involved" in the complete determination of the controversy, and hence, defendants were entitled to maintain cross-petition to quiet title under statute providing for counterclaims and requiring that the right to relief must be necessarily or properly involved in the action. 12 O.S. 1951 § 273.—Lambert v. Rainbolt, 250 P.2d 459, 207 Okla. 451, 1952 OK 412.—Set-Off 29(2).

NECESSARILY PRODUCED HARM

Bkrcty.S.D.Cal. 1995. For purposes of statutory exception to discharge for willful and malicious injury, debtor's sexual harassment of coemployee "necessarily produced harm," and, thus, debtor's actions were malicious within meaning of statute, even though doctor's report indicated that coemployee's severe emotional distress was caused by antagonistic supervisor, where report also mentioned debtor's sexual harassment as cause of coemployee's condition, and debtor's conduct set off chain of events that ultimately caused coemployee to have complete mental collapse, diagnosed as major depression and posttraumatic stress disorder. Bankr.Code, 11 U.S.C.A. § 523(a)(6).—In re Sotelo, 179 B.R. 214.—Bankr 3355(1.25).

NECESSARILY PRODUCES HARM

Bkrcty.N.D.Cal. 1994. Act "necessarily produces harm" and may qualify as "willful and malicious" under statutory exception to discharge, only if it is targeted at creditor, at least in the sense that it is certain or almost certain to cause financial harm to creditor. Bankr.Code, 11 U.S.C.A. § 523(a)(6).—In re Clayton, 168 B.R. 700.—Bankr 3355(1.10), 3355(1.25).

NECESSARILY REJECTED

C.A.9 (Idaho) 1995. Sentence enhancement for income derived from criminal activity may not be based on conduct of which defendant has been acquitted or on facts "necessarily rejected," which for these purposes is defined much more narrowly than possibly rejected or even probably rejected, by jury's acquittal. U.S.S.G. § 2T1.3 (1993).—U.S. v. Karterman, 60 F.3d 576.—Sent & Pun 736.

NECESSARILY RELATED

C.A.5 (La.) 1992. Fact that marine policy's liability-limiting term might have referred to federal limitation court's decision did not make interpretation of that term "necessarily related" to vessel owner's limitation rights under Limited Liability

Act, so as to bring policy interpretation within exclusive federal jurisdiction. 46 App.U.S.C.A. § 181 et seq.—*Magnolia Marine Transport Co., Inc. v. Laplace Towing Corp.*, 964 F.2d 1571, on remand *Magnolia Marine Transport Co. v. Frye*, 1992 WL 396854.—Ship 209(1.6).

NECESSARILY REQUIRES A CULPABLE MENTAL STATE

Or.App. 1977. Under culpability requirements of criminal code, strong policy is embodied in statutes of requiring culpable mental state for every material element; phrase “necessarily requires a culpable mental state” refers to all elements which go to substance of conduct prohibited, and the only elements which do not necessarily require such mental state are those relating to jurisdiction and the like but unrelated to prohibited conduct. ORS 161.025, 161.025(1)(d), 161.095, 161.095(2), 161.105, 161.115, 161.115(1), 167.207, 167.207(1, 4), 167.232.—*State v. Blanton*, 570 P.2d 411, 31 Or. App. 327, review allowed 281 Or. 531, affirmed 588 P.2d 28, 284 Or. 591.—Crim Law 20.

NECESSARILY TRAVELED

Minn. 1916. A county commissioner, in attending board meeting, is entitled to mileage for distance “necessarily traveled” by the usual traveled route by train from his residence to the county seat.—*Marshall County v. Rokke*, 159 N.W. 791, 134 Minn. 346, Am. Ann. Cas. 1918D, 932.—Counties 46.

Neb. 1913. Where an election officer in taking the returns to the county seat traveled 131 miles by a route which was the shortest railway route, the court could not say, as a matter of law, that such distance was not “necessarily traveled” within Cobby’s Ann.St.1911, § 9472, entitling him to mileage for each mile necessarily traveled, though there was a difficult wagon route only 66 miles in length.—*Blair v. Sheridan County*, 142 N.W. 693, 94 Neb. 124.—Elections 53.

Neb. 1913. A judgment allowing clerk of election board mileage for 262 miles “necessarily traveled” by the clerk in taking election returns from polling place to county seat, was supported by stipulation which related that clerk traveled 131 miles on railroads to arrive at county seat although by highway the distance was 60 miles through sand-hill country, and related that clerk took shortest railroad route and the quickest route, especially where stipulation failed to show any public conveyance or means of travel by the shortest highway route.—*Blair v. Sheridan County*, 142 N.W. 693, 94 Neb. 124.—Elections 53.

NECESSARILY USED

Mich.App. 1996. Depositions which were relied upon in connection with defendant’s successful motion for summary disposition were “necessarily used,” so that costs for deposition transcripts could potentially be taxed against plaintiff. M.C.L.A. § 600.2549.—*Portelli v. I.R. Const. Products Co., Inc.*, 554 N.W.2d 591, 218 Mich.App. 591, appeal denied 573 N.W.2d 618, 456 Mich. 919.—Costs 154.

Tex. 1889. Plaintiff alleged that while he was walking on a railroad track operated by the defendant, in a certain street of a city, which street and track were commonly and necessarily used by the plaintiff and the public generally, the employees of the defendant detached cars from a train, and sent them, without signal or warning, on a down grade, in the direction of plaintiff, and that he was run over by the said cars without any fault or negligence on his part. *Held*, that the allegation that the railroad track was “necessarily used” by the public must be taken to mean that the street was so narrow or otherwise obstructed that there was not room to walk in the street without going upon the track; and that while special exceptions might have been sustained to such averment, and that as to lack of negligence on the part of plaintiff, on the ground of generality, the petition must be held good on general demurrer.—*Lewis v. Galveston, H. & S.A. Ry. Co.*, 11 S.W. 528, 73 Tex. 504.—R R 394(2).

Wis.App. 1984. Property within boundaries of Public Service Corporation’s federally licensed hydroelectric power project, which was required as a condition of its license and was used solely for public recreation, was “necessarily used” in its business within meaning of statute, and therefore was subject only to state taxation. W.S.A. 76.23.—*Wisconsin Public Service Corp. v. Oconto County*, 347 N.W.2d 908, 118 Wis.2d 428.—Mun Corp 966(1).

NECESSARILY USED IN OPERATION OF RAILROAD BUSINESS

Wis. 1970. Railroad freight houses, which were built to replace freight terminals torn down to facilitate a new post office and which were used to assemble carload shipments of freight for outbound shipment and for breakdown and assembling of incoming shipments for local truck delivery, were “necessarily used in operation of railroad business” and, thus, exempt from local property taxes, notwithstanding fact that local trucking firms leased portions of buildings. W.S.A. 76.02(10, 11).—*Chicago, M., St. P. & P. R. Co. v. City of Milwaukee*, 176 N.W.2d 580, 47 Wis.2d 88.—Mun Corp 967(4).

NECESSARY

U.S. 1999. Federal Communications Commission’s (FCC) assumption, in support of unbundling rule requiring incumbent telephone local exchange carrier (LEC) to provide requesting carrier with access to minimum of seven network elements, that any increase in cost or decrease in quality imposed by denial of network element rendered access to that element “necessary” within meaning of Telecommunications Act of 1996 and caused failure to provide that element to “impair” entrant’s ability to furnish its desired services was not in accord with ordinary and fair meaning of those terms. Telecommunications Act of 1996, 47 U.S.C.A. § 251(d)(2); 47 C.F.R. § 51.319.—*AT & T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand IN THE MATTERS OF IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS OF THE

TELECOMMUNICATIONS ACT OF 1996, 1999 WL 156020, on remand Iowa Utilities Bd. v. F.C.C., 219 F.3d 744, certiorari granted in part Verizon Communications, Inc. v. F.C.C., 121 S.Ct. 877, 531 U.S. 1124, 148 L.Ed.2d 788, certiorari granted in part WorldCom, Inc. v. Verizon Communications, Inc., 121 S.Ct. 877, 531 U.S. 1124, 14—Tel 267.

U.S.Cal. 1948. Under the Judicial Code authorizing Circuit Courts of Appeals to issue writs necessary for the exercise of jurisdiction, “necessary” does not mean essential to the physical discharge of appellate duties, but reasonably necessary in the interest of justice, and the writ of habeas corpus may issue whenever its use as an aid to an appeal of which jurisdiction exists is calculated in the sound judgment of the court to achieve the ends of justice. 28 U.S.C.A. § 1651.—Price v. Johnston, 68 S.Ct. 1049, 334 U.S. 266, 92 L.Ed. 1356.—Hab Corp 828.

U.S.Cal. 1948. Where prisoner is without counsel and desires that none be appointed for him and believes that he alone can adequately present his case on appeal in habeas corpus proceeding, an order that prisoner be produced before the court so that he may argue the appeal may be reasonably necessary in the interest of justice in view of court’s ordinary inability to designate counsel for prisoner without his consent, and where the court is satisfied that the prisoner should be so produced, a writ to effectuate such production is “necessary” within the Judicial Code authorizing issuance of writs necessary for exercise of jurisdiction. 28 U.S.C.A. § 1651.—Price v. Johnston, 68 S.Ct. 1049, 334 U.S. 266, 92 L.Ed. 1356.—Hab Corp 828.

U.S.Del. 1940. Where stockholder borrowed shares sold by him to corporation’s executive committee in order that committeemen might have a financial interest in corporation, and thereafter borrowed additional shares to repay original lender, agreeing to pay new lender a sum equal to dividends on shares plus taxes imposed as result of agreement, fact that payments may have been “necessary,” on the theory that stockholder’s estate was benefited, did not render payments deductible by stockholder in computing net income, in absence of showing that they were also ordinary expenses. Revenue Act 1928, § 23(a), 26 U.S.C.A.Int.Rev. Acts, page 356.—Deputy v. du Pont, 60 S.Ct. 363, 308 U.S. 488, 84 L.Ed. 416.—Int Rev 3318.

U.S.Neb. 2000. The word “necessary” could not refer to an absolute necessity or to absolute proof, as it was used in *Planned Parenthood of Southeastern Pa. v. Casey*, which set forth the principle that, subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.—Stenberg v. Carhart, 120 S.Ct. 2597, 530 U.S. 914, 147 L.Ed.2d 743.—Abort 0.5.

U.S.N.Y. 1942. A Circuit Court of Appeals is not limited to issuing a writ of habeas corpus only when it finds that it is “necessary” in the sense that the court could not otherwise physically discharge

its appellate duty.—Adams v. U.S. ex rel. McCann, 63 S.Ct. 236, 317 U.S. 269, 87 L.Ed. 268, 143 A.L.R. 435, mandate stayed 63 S.Ct. 442, rehearing denied 317 U.S. 605, 87 L.Ed. 568.—Hab Corp 617.1.

U.S.N.Y. 1942. Where landlords’ employees were engaged in operation and maintenance of loft buildings, tenants of which were principally engaged in production of goods for interstate commerce, the work of the employees had such close and immediate tie with the process of production for commerce, and was so much an essential part of it that the employees were engaged in occupation “necessary” to the “production of goods for commerce” and were therefore entitled to benefit of wage and hour provisions of Fair Labor Standards Act. Fair Labor Standards Act of 1938, §§ 3(j), 6, 7, 29 U.S.C.A. §§ 203(j), 206, 207.—Kirschbaum v. Walling, 62 S.Ct. 1116, 316 U.S. 517, 86 L.Ed. 1638.—Commerce 62.44(1), 62.63, 62.44(1), 62.63.

U.S. Armed Forces 1995. To demonstrate that expert’s testimony on matter in issue on the merits or on interlocutory question is “necessary,” as required for party to be entitled to production of witness, requesting party must demonstrate that witness can offer opinion based on facts or data related to issue in question. R.C.M. 703(b)(1).—U.S. v. Reveles, 41 M.J. 388.—Mil Jus 1124.

C.A.D.C. 1958. “Strike expenses” are not “ordinary” or “necessary” in sense that ordinary and necessary expenses are forecast in prospective rate case, and in fixing rate of compensation for future carriage of mail by air, it is not proper to make allowance for expense of possible strike in future period. Civil Aeronautics Act of 1938, § 406 as amended 49 U.S.C.A. § 486.—American Overseas Airlines, Inc. v. Civil Aeronautics Bd., 254 F.2d 744, 103 U.S.App.D.C. 41.—Aviation 103.

C.A.D.C. 1950. A provision of the Secretary of Agriculture’s milk orders for making deductions from equalization pool belonging in equity to all milk producers and paying deductions to co-operative associations could not be sustained under statutory authority to include in marketing order provisions “incidental” to and not “inconsistent” with statutory conditions or as “necessary” to effectuate the other provisions of the orders. Agricultural Adjustment Act of 1933, §§ 1, 2, 8c(5), (7) (D), (18), 10(b) (1), as amended, 7 U.S.C.A. §§ 601, 602, 608c(5), (7) (D), (18), 610(b) (1).—Brannan v. Stark, 185 F.2d 871, 87 U.S.App.D.C. 388, certiorari granted 71 S.Ct. 621, 341 U.S. 908, 95 L.Ed. 1346, certiorari granted Dairyman’s League Cooperative Association, Inc. v. Stark, 71 S.Ct. 621, 341 U.S. 908, 95 L.Ed. 1346, affirmed 72 S.Ct. 433, 342 U.S. 451, 96 L.Ed. 497.—Food 4.5(4).

C.A.1 2002. For business expense to be “necessary,” as required for deductibility, expense must be appropriate and helpful for development of taxpayer’s business. 26 U.S.C.A. § 162(a).—Capital Video Corp. v. C.I.R., 311 F.3d 458.—Int Rev 3318.

C.A.1 1974. For item to be deductible for income tax purposes as “ordinary and necessary business expense,” taxpayer must show that it was

"expense" both "ordinary" and "necessary," which was paid or incurred during taxable year for carrying on trade or business. 26 U.S.C.A. (I.R.C.1954) § 162(a).—*Narragansett Wire Co. v. C. I. R.*, 491 F.2d 371.—Int Rev 3377.

C.A.2 1992. List of employees' names and home addresses was "necessary" for union to fulfill its statutory obligations within meaning of Federal Service Labor-Management Relations Act. 5 U.S.C.A. §§ 552(b)(6), 7114(b)(4)(B).—*Federal Labor Relations Authority v. U.S. Dept. of Veterans Affairs*, 958 F.2d 503.—Records 52.

C.A.5 1993. Material that union member-officer requested from Border Patrol relating to claim that he was unfairly given low performance rating was neither "necessary" nor "reasonably available" and, thus, Federal Service Labor Management Relations Statute (FSLMRS) did not require Patrol to furnish that information to union; information request included thousands of documents stored in several locations in United States and in other countries, filed under various classifications and categories and, because only issue was individual fairness of one evaluation for one employee, union could have reasonably determined fairness of that evaluation with far less information than it actually demanded. 5 U.S.C.A. § 7114(b)(4).—*Department of Justice v. Federal Labor Relations Authority*, 991 F.2d 285.—Labor 366.

C.A.7 1960. "Ordinary and necessary" expenses, within meaning of income tax statute, are such as are directly connected with or proximately result from carrying on of trade or business; "ordinary" having connotation of normal, usual or customary in type of business involved and "necessary" meaning "appropriate and helpful." 26 U.S.C.A. (I.R.C.1939) § 23(a)(1)(A).—*International Trading Co. v. C.I.R.*, 275 F.2d 578.—Int Rev 3318.

C.A.8 1971. Expenses incurred by coffee company's president, who was not stockholder and who was paid fixed annual salary, in safaris to coffee-growing countries, during which he engaged in big game hunting and photography as well as visiting coffee-growing operations, were not deductible as "ordinary and necessary expenses" of his trade or business, though his films increased his reputation as coffee expert and helped increase his sales, since the safaris were not "necessary" to his employment where the current owner of the company did not encourage their continuance and did not expect president to expend any of his own funds for advertising the company's products. 26 U.S.C.A. (I.R.C.1954) § 162.—*Brown v. C. I. R.*, 446 F.2d 926.—Int Rev 3331.

C.A.9 2002. Term "necessary," as would support business expense deduction for ordinary and necessary expenses, imposes only the minimal requirement that expense be appropriate and helpful for development of taxpayer's business. 26 U.S.C.A. § 162(a).—*Smith v. C.I.R.*, 300 F.3d 1023.—Int Rev 3318.

C.A.9 1977. "Ordinary" expense is one that is normally to be expected, in view of circumstances facing business, and a "necessary" expense is one

that is appropriate and helpful to the business. 26 U.S.C.A. (I.R.C.1954) § 162(a).—*Palo Alto Town & Country Village, Inc. v. C. I. R.*, 565 F.2d 1388.—Int Rev 3318.

C.A.10 2000. Trade or business expenses are "necessary," as required for deduction, if they are appropriate and helpful. 26 U.S.C.A. § 162.—*Kurzet v. C.I.R.*, 222 F.3d 830.—Int Rev 3318.

C.A.10 2000. Federal Communications Commission (FCC) order preempting Wyoming statute that granted certain incumbent local exchange carriers (LECs) protection from competition to enable LECs to recover investments to upgrade services was "necessary," within meaning of Telecommunications Act's preemption provision, to afford new LECs a competitive opportunity in the marketplace, given absence of alternative besides complete preemption that would guarantee across the board competitive neutrality. Telecommunications Act of 1996, 47 U.S.C.A. § 253(a, b, d); *Wyo.Stat. Ann.* § 37-15-201(c).—*RT Communications, Inc. v. F.C.C.*, 201 F.3d 1264.—Tel 267.

C.A.10 1993. Although disclosure of federal employees' home addresses to their unions was "necessary" for collective bargaining process under Federal Service Labor-Management Relations Statute, disclosure was prohibited by Privacy Act. 5 U.S.C.A. §§ 552a, 7114(b)(4).—*Federal Labor Relations Authority v. U.S. Dept. of Defense, Army and Air Force Exchange Service, Dallas, Tex.*, 984 F.2d 370.—Labor 179; Records 31.

C.A.10 1959. For an expenditure to be "ordinary and necessary" within section of the Internal Revenue Code allowing as deductions in computing net income all the ordinary and necessary expenses paid during the taxable year in carrying on any trade or business, the expenditure must have some reasonably proximate relation to the customary conduct of the taxpayer's business, but an expense may be "ordinary" even though it happen but once in the taxpayer's lifetime, although for an expenditure to be "necessary" it is not essential that there be an absolute and compelling reason, and when the expenditure is appropriate and helpful to the taxpayer's business, courts are loath to override the taxpayer's judgment. 26 U.S.C.A. (I.R.C.1939) § 23(a)(1)(A).—*Cravens v. C.I.R.*, 272 F.2d 895.—Int Rev 3318.

C.A.10 1958. Purchase of whiskey, in violation of Oklahoma law, for entertainment and good will, and payments to county officials and employees to influence performance of their official duties which were, at the very least, against public policy were properly disallowed as "necessary business expenses" since an expense is not "necessary" when there is a severe, immediate and direct frustration of state policy. 37 Okl.St. Ann. § 1; 26 U.S.C.A. (I.R.C.1939) § 23(a)(1)(A).—*Finley v. C.I.R.*, 255 F.2d 128.—Int Rev 3338.

C.A.9 (Cal.) 2000. Disassembly of discrete portions of video game system manufacturer's copyrighted basic input-output system (BIOS) firmware and repeated intermediate copying of BIOS to observe its operation in emulated environment were

"necessary," for purposes of fair use analysis, in order to access unprotected, functional elements of BIOS to develop emulator software that would allow manufacturer's games to be played on computer, not just on manufacturer's console; large number of copies made by developer did not weigh heavily against fair usage in intermediate infringement case involving final product that did not contain any infringing material, even though developer could have made fewer copies by disassembling entire BIOS. 17 U.S.C.A. § 107.—*Sony Computer Entertainment, Inc. v. Connectix Corp.*, 203 F.3d 596, 180 A.L.R. Fed. 655, certiorari denied 121 S.Ct. 172, 531 U.S. 871, 148 L.Ed.2d 118.—Copyr 67.3.

C.A.9 (Cal.) 1992. In determining whether party is "necessary" for purposes of joinder of indispensable parties, court considers whether complete relief could be accorded among existing parties and whether absent party had legally protected interest in subject of suit. Fed.Rules Civ.Proc.Rules 19, 19(a, b), 28 U.S.C.A.—*Shermoen v. U.S.*, 982 F.2d 1312, certiorari denied 113 S.Ct. 2993, 509 U.S. 903, 125 L.Ed.2d 688, rehearing denied 114 S.Ct. 13, 509 U.S. 940, 125 L.Ed.2d 765.—Fed Civ Proc 202.

C.A.9 (Cal.) 1987. Power of FSLIC to do things that may be "necessary" in connection with its receivership of failed institution does not give it authority to adjudicate claims against it as receiver, subject only to review by Administrative Procedure Act. 5 U.S.C.A. § 551 et seq.; National Housing Act, § 406(d), as amended, 12 U.S.C.A. § 1729(d).—*Morrison-Knudsen Co., Inc. v. CHG International, Inc.*, 811 F.2d 1209, certiorari dismissed Federal Sav. and Loan Ins. Corp. v. Stevenson Associates, 109 S.Ct. 358, 488 U.S. 935, 102 L.Ed.2d 349.—B & L Assoc 48.

C.A.10 (Colo.) 1993. Professional's services are "necessary," within meaning of statute authorizing bankruptcy court to award reasonable fees for actual, necessary services, only if they confer benefit on bankruptcy estate. Bankr.Code, 11 U.S.C.A. § 330(a)(1).—*In re Lедerman Enterprises, Inc.*, 997 F.2d 1321.—Bankr 3182.

C.A.10 (Colo.) 1993. Services that attorneys provided in connection with their efforts to obtain confirmation for debtor's proposed plan of reorganization conferred no benefit on bankruptcy estate, and accordingly were not "necessary" services for which compensation could be awarded, given bankruptcy court's determination, in granting creditor's motion to convert case, that Chapter 11 plan and case itself had been filed in bad faith; debtor's inability to successfully develop and complete plan of reorganization should have been apparent to debtor's attorneys from commencement of case. Bankr.Code, 11 U.S.C.A. § 330(a)(1).—*In re Lедerman Enterprises, Inc.*, 997 F.2d 1321.—Bankr 3182.

C.A.10 (Colo.) 1974. Computer costs, credit checks and promotional activities of bank in adopting use of cards and computers to conduct financing of consumer transactions were "necessary," within section of Internal Revenue Code allowing

as income tax deduction all ordinary and necessary expenses paid in carrying on trade or business. 26 U.S.C.A. (I.R.C.1954) § 162(a).—*Colorado Springs Nat. Bank v. U.S.*, 505 F.2d 1185.—Int Rev 3332.

C.A.11 (Fla.) 1999. For purposes of determining whether a party should be joined if feasible, a party is considered "necessary" to the action if the court determines either that complete relief cannot be granted with the present parties or the absent party has an interest in the disposition of the current proceedings. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—*Laker Airways, Inc. v. British Airways, PLC*, 182 F.3d 843.—Fed Civ Proc 202.

C.A.5 (Fla.) 1963. An expense may be "necessary" within meaning of statute allowing deduction of ordinary and necessary expenses, even though taxpayer is under no legal obligation to pay it, if it serves to aid his trade or business. 26 U.S.C.A. (I.R.C.1939) § 23(a); 26 U.S.C.A. (I.R.C.1954) § 162(a).—*Swed Distributing Co. v. C.I.R.*, 323 F.2d 480.—Int Rev 3318.

C.A.9 (Hawaii) 2002. Republic of the Philippines and its agency asserted claim distinct from those asserted by Philippine national bank and Panamanian company when Republic and agency claimed that assets at issue in interpleader action, which had been transferred to company by former president of the Republic, were misappropriated and thus had always belonged to Republic, and therefore Republic and agency were "necessary" parties in interpleader action. Fed.Rules Civ.Proc. Rule 19(a), 28 U.S.C.A.—*In re Republic of Philippines*, 309 F.3d 1143.—Interpl 19.

C.A.9 (Idaho) 1987. Electrowinning to recover antimony from leachate solution of hot sodium sulfide and silver-copper concentrate would be "necessary" to leaching and would be necessary to mining process for purpose of depletion deduction, only if no known way existed to leach silver-copper concentrate without electrowinning; commercial necessity or necessity to make profit did not determine whether electrowinning was necessary to mining process. 26 U.S.C.A. §§ 611, 613, 613(c)(2, 5).—*Sunshine Min. Co. v. U.S.*, 827 F.2d 1404.—Int Rev 3492.

C.A.7 (Ill.) 1996. Word "necessary" in Constitution does not mean essential; it means expedient to task at hand, for as holder of legislative power defines what tasks to pursue, it also may decide how strong support for new rules needs to be.—*Serpico v. Laborers' Intern. Union of North America*, 97 F.3d 995.—Const Law 14.

C.A.7 (Ill.) 1995. There was no clear error in district court's determination that costs incurred for removal of asbestos from plant were not "necessary" within meaning of CERCLA; expert hired to investigate did not recommend that owner remove any of loose asbestos, feeling that danger was not sufficient to warrant the expense in light of what expert considered to be cheaper alternatives. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), 42 U.S.C.A. § 9607(a)(4)(B).—*G.J. Leasing Co., Inc. v. Union Elec. Co.*, 54 F.3d 379.—Environ Law 446.

C.A.6 (Ky.) 1990. Witness who is "necessary" to adequate defense within meaning of criminal subpoena rule is witness who is relevant, material, and useful to adequate defense. Fed.Rules Cr.Proc. Rule 17(b), 18 U.S.C.A.—U.S. v. Moore, 917 F.2d 215, certiorari denied 111 S.Ct. 1590, 499 U.S. 963, 113 L.Ed.2d 654, certiorari denied Morse v. U.S., 111 S.Ct. 1590, 499 U.S. 963, 113 L.Ed.2d 654.—Witn 8.

C.A.6 (Ky.) 1977. In determining whether presence of witness is necessary to adequate defense so as to warrant issuance of subpoena on behalf of indigent defendant, "necessary" means relevant, material and useful to adequate defense. Fed. Rules Crim.Proc. rule 17(b), 18 U.S.C.A.; U.S.C.A.Const. Amends. 5, 6.—U.S. v. Barker, 553 F.2d 1013, 42 A.L.R. Fed. 213.—Witn 8.

C.A.5 (La.) 1995. Although valuing Chapter 11 debtor's claim against creditor for purported breach of agreement to submit joint plan of reorganization to bankruptcy court was critical part of confirming proposed Chapter 11 plan, determination of creditor's obligation, if any, to principal of debtor was not "necessary" to bankruptcy court's conclusion that debtor's claim should be compromised because estate would recover more by confirming plan than by pursuing litigation against creditor, for purposes of applying collateral estoppel to bar creditor from defending against principal's claim in subsequent proceeding.—Copeland v. Merrill Lynch & Co., Inc., 47 F.3d 1415.—Judgm 724.

C.A.4 (Md.) 1948. A seaman who incurred taxi bill of \$5 and advanced \$300 to captain to obtain his release from imprisonment was not entitled to lien for such sums on theory that captain is "necessary" to vessel within statute giving lien to persons furnishing "necessaries". 46 U.S.C.A. § 971.—Vlaivianos v. The Cypress, 171 F.2d 435, certiorari denied 69 S.Ct. 1168, 337 U.S. 924, 93 L.Ed. 1732, certiorari denied Maryland Drydock Co v. Vlaivianos, 69 S.Ct. 1171, 337 U.S. 924, 93 L.Ed. 1732.—Mar Liens 25.

C.A.1 (Mass.) 1983. Term "necessary," used by District of Columbia Court of Appeals to explain application of Freedom of Information Act's exemption for confidential commercial information to information which, if disclosed, would impair government's ability to obtain necessary information in the future, was meant to reflect Congress' purpose to protect information which would be particularly helpful to agency officials in carrying out their mandate and not just information absolutely essential to the operation of the agency or to the governing process itself. 5 U.S.C.A. §§ 552, 552(b)(4).—9 to 5 Organization for Women Office Workers v. Board of Governors of Federal Reserve System, 721 F.2d 1.—Records 59.

C.A.1 (Mass.) 1972. Word "necessary," in section of National Bank Act permitting national banking associations to exercise all such incidental powers as shall be necessary to carry on the business of banking, was not used to connote that which is indispensable. The National Bank Act, 12

U.S.C.A. §§ 24, 24, subd. 7.—Arnold Tours, Inc. v. Camp, 472 F.2d 427.—Banks 258.

C.A.6 (Mich.) 1981. The "business necessity" defense to charge of employment discrimination does not require a showing that the challenged practice is absolutely necessary or inherently essential to the operation of the business; proper test is the "manifest relationship" test enunciated in *Griggs* and its progeny which looks to whether the discriminatory practice is necessary to safe and efficient job performance and for a practice to be "necessary" it need not be the sine qua non of job performance as indispensability is not the touchstone but, rather, the practice must substantially promote the efficient operation of the business. Civil Rights Act of 1964, §§ 701 et seq., 703(a)(2), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a)(2).—Chrisner v. Complete Auto Transit, Inc., 645 F.2d 1251, on remand 1983 WL 678, appeal dismissed 1983 WL 14960.—Civil R 372.

C.A.9 (Mont.) 1996. To determine whether nonparty is "necessary" to action, for purpose of determining applicability of compulsory joinder rule, Court of Appeals first determines whether complete relief is possible among those already parties to suit and then decides whether nonparty has legally protected interest in suit. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—Yellowstone County v. Pease, 96 F.3d 1169, certiorari denied 117 S.Ct. 1691, 520 U.S. 1209, 137 L.Ed.2d 818.—Fed Civ Proc 202.

C.A.2 (N.Y.) 1987. Term "necessary" under provision of Bankruptcy Code which allows rejection or modification of collective bargaining agreement only if modifications are "necessary" to permit reorganization of debtor and assure that all creditors, debtor and affected parties are treated fairly and equitably does not mean essential or bare minimum, but rather, places on debtor burden of proving that its proposal is made in good faith and contains necessary changes that will enable debtor to complete reorganization process successfully; declining to follow *Wheeling-Pittsburgh Steel Corp. v. United Steelworkers*, 791 F.2d 1074 (3d Cir.). Bankr.Code, 11 U.S.C.A. § 1113(b)(1)(A).—Truck Drivers Local 807, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Carey Transp. Inc., 816 F.2d 82.—Bankr 3113.

C.A.2 (N.Y.) 1979. Under provision of Federal Trade Commission Act authorizing study of energy industry, requirement that ancillary investigation be "necessary" to principal investigation does not mean "absolutely needed" or "inescapable"; such proviso requires only that ancillary investigation arise reasonably and logically out of main investigation of competitive conditions in energy industry and does not mean that Federal Trade Commission must pursue all other "reasonably available alternatives" before engaging in ancillary investigation. Federal Trade Commission Act, § 6 as amended 15 U.S.C.A. § 46.—F. T. C. v. Rockefeller, 591 F.2d 182.—Trade Reg 751.1.

C.A.2 (N.Y.) 1976. Word "necessary" as used in provision of Criminal Justice Act governing rendi-

tion of investigative, expert or other services necessary to defense of an indigent should at least mean reasonably necessary and "an adequate defense" must include preparation for cross-examination of a government expert as well as presentation of an expert defense witness. 18 U.S.C.A. § 3006A(e)(1).—U.S. v. Durant, 545 F.2d 823.—Costs 302.3.

C.A.4 (N.C.) 1998. Evidence is "necessary," for purposes of other bad acts rule, when it furnishes part of the context of the crime. Fed.Rules Evid. Rule 404(b), 28 U.S.C.A.—U.S. v. Wells, 163 F.3d 889, certiorari denied 120 S.Ct. 109, 528 U.S. 841, 145 L.Ed.2d 92.—Crim Law 369.2(1).

C.A.6 (Ohio) 2002. In order to demonstrate that accommodation is "necessary," within meaning of Fair Housing Amendments Act (FHAA), disabled person must show that, but for accommodation, he/she will likely be denied an equal opportunity to enjoy the housing of his/her choice. Civil Rights Act of 1968, § 804(f)(3)(B), as amended, 42 U.S.C.A. § 3604(f)(3)(B).—Howard v. City of Beavercreek, 276 F.3d 802.—Civil R 131.

C.A.10 (Okla.) 1993. "Necessary," as used in rule requiring issuance of subpoena if presence of witness is necessary to defense, means relevant, material and useful. Fed.Rules Cr.Proc.Rule 17(b), 18 U.S.C.A.—U.S. v. Hernandez-Urista, 9 F.3d 82.—Witn 8.

C.A.10 (Okla.) 1992. When private party incurs response costs in developing its own remedy for conditions at hazardous waste site, solely to defend against government's injunction action, private parties response costs are not "necessary" within meaning of CERCLA provision allowing development cost recovery. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 106(a), 107(a)(4)(B), 42 U.S.C.A. §§ 9606(a), 9607(a)(4)(B).—U.S. v. Hardage, 982 F.2d 1436, certiorari denied Advance Chemical Co. v. U.S., 114 S.Ct. 300, 510 U.S. 913, 126 L.Ed.2d 248.—Environ Law 446.

C.A.3 (Pa.) 1987. Word "necessary" as used in clause explicitly limiting employer's deduction for its pension plan's past service liability does not limit deduction to that portion of liability that remains unfunded in tax year. 26 U.S.C.A. §§ 404, 404(a)(1)(A)(iii).—AMP Inc. v. U.S., 820 F.2d 612.—Int Rev 3584.

C.A.5 (Tex.) 1998. Requirement that expense must have benefitted the estate to be entitled to administrative priority has no independent basis in the Bankruptcy Code, but is merely a way of testing whether particular expense was truly necessary to the estate; if it was of no benefit, it cannot have been "necessary." Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—Matter of H.L.S. Energy Co., Inc., 151 F.3d 434.—Bankr 2871.

C.A.5 (Tex.) 1993. Even assuming that power to sell annuities is power incident to banking, that power is not "necessary" within meaning of National Bank Act section granting national banks all such incidental powers "as shall be necessary to carry on

the business of banking." National Bank Act, 12 U.S.C.A. § 24, subd. 7.—Variable Annuity Life Ins. Co. v. Clarke, 998 F.2d 1295, rehearing denied 13 F.3d 833, certiorari granted NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co., 114 S.Ct. 2161, 511 U.S. 1141, 128 L.Ed.2d 885, certiorari granted Ludwig v. Variable Annuity Life Ins. Co., 114 S.Ct. 2161, 511 U.S. 1141, 128 L.Ed.2d 885, reversed 115 S.Ct. 810, 513 U.S. 251, 130 L.Ed.2d 740, on remand 49 F.3d 128.—Banks 258.

C.A.5 (Tex.) 1992. Creditor's claim is entitled to administrative priority, as "actual" and "necessary" cost of preserving estate, only if cost benefitted estate and its creditors. Bankr.Code, 11 U.S.C.A. § 503(b).—Matter of TransAmerican Natural Gas Corp., 978 F.2d 1409, rehearing denied 983 F.2d 1060, certiorari dismissed TransAmerican Natural Gas Corp. v. Toma Steel Supply, Inc., 113 S.Ct. 1892, 507 U.S. 1048, 123 L.Ed.2d 646.—Bankr 2871.

C.A.4 (Va.) 1996. Under standard for admitting evidence of prior bad acts, evidence is "necessary" if it furnishes part of context of crime. Fed.Rules Evid.Rule 404(b), 28 U.S.C.A.—U.S. v. Aramony, 88 F.3d 1369, certiorari denied 117 S.Ct. 1842, 520 U.S. 1239, 137 L.Ed.2d 1046, appeal after remand 166 F.3d 655, certiorari denied 119 S.Ct. 2022, 526 U.S. 1146, 143 L.Ed.2d 1034.—Crim Law 369.2(1).

C.A.4 (Va.) 1992. Limited partnership was not "necessary" or "indispensable" to proceeding brought by limited partner against general partner, in which general partner sought to compel dissolution, for purpose of diversity jurisdiction, which would be destroyed by joinder of partnership; action arose out of strictly internal conflict between partners, all of whom would be before district court, and general partner failed to establish that partnership itself had any interest itself distinct from interests of several partners. 9 U.S.C.A. §§ 1 et seq., 4; Fed.Rules Civ.Proc.Rule 19(a, b), 28 U.S.C.A.—Delta Financial Corp. v. Paul D. Commanduras & Associates, 973 F.2d 301.—Fed Cts 302.

Ct.Cl. 1978. For purposes of statute providing that there shall be allowed as a deduction all ordinary and necessary expenses paid or incurred during taxable year in carrying on taxpayer's trade or business, an expense satisfies the requirement of being "necessary" if it is appropriate and helpful to the development of taxpayer's business. 26 U.S.C.A. (I.R.C.1954) § 162.—Southland Royalty Co. v. U. S., 582 F.2d 604, 217 Ct.Cl. 431, certiorari denied 99 S.Ct. 1991, 441 U.S. 905, 60 L.Ed.2d 373.—Int Rev 3318.

C.C.A.2 1934. Sum expended by actor for entertainment of others to enhance his reputation as actor and secure theatrical engagements more easily held deductible for income tax purposes as "ordinary and necessary expenses," though sum was substantial, "necessary" meaning appropriate and helpful. Revenue Act 1926, § 214(a), 26 U.S.C.A.Int.Rev.Acts, page 166.—Blackmer v. Commissioner of Internal Revenue, 70 F.2d 255, 92 A.L.R. 982.—Int Rev 3338.

C.C.A.9 (Cal.) 1937. Where complainant seeking to dismiss suit to establish trust in stock had brought an action at law involving the same property in which he was entitled to a jury trial, Circuit Court of Appeals held authorized to grant writ of mandate to compel lower court to dismiss the suit, under statute authorizing writ when "necessary" for exercise of court's jurisdiction, as "necessary" should not be given narrow interpretation. 28 U.S.C.A. § 1651.—Whittel v. Roche, 88 F.2d 366.—Fed Cts 527.

C.C.A.10 (Colo.) 1946. The word "necessary" in the Fair Labor Standards Act providing overtime compensation for employees engaged in any process or occupation necessary to production of goods for commerce, means practically necessary, and not indispensable, essential or vital. Fair Labor Standards Act of 1938, §§ 3(j), 7(a), 29 U.S.C.A. §§ 203(j), 207(a).—Walling v. Amidon, 153 F.2d 159.—Commerce 62.47.

C.C.A.9 (Idaho) 1938. The word "necessary" as applied to railroad property for taxation purposes does not mean "inevitable" nor merely "convenient" or "profitable," but a stage of utility or materiality to the railroad's business intermediate between the quoted expressions, and may be expressed in the phrase "reasonably required in the exercise of sound business prudence."—Ada County v. Oregon Short Line R. Co., 97 F.2d 666.

C.C.A.8 (Mo.) 1943. Though statutory provisions that employer must pay overtime to employees engaged in production of goods for commerce, and that employee shall be deemed to have been engaged in production of goods if employed in any process "necessary" to production thereof, do not require that employee himself participate physically in the productive process, the activity in which he is engaged must have such a close and immediate tie with process of production for commerce as to be an essential part thereof, and work which has only the most tenuous relation thereto is not "necessary" to the production. Fair Labor Standards Act of 1938, §§ 1 et seq., 3(j), 7, 29 U.S.C.A. §§ 201 et seq., 203(j), 207.—Noonan v. Fruco Const. Co., 140 F.2d 633.—Commerce 62.47.

C.C.A.8 (Mo.) 1943. The application of Fair Labor Standards Act is dependent on facts peculiar to particular business or industry involved, and necessitates examination of relationship of employee to production to which he claims his activities are "necessary" within the Act. Fair Labor Standards Act of 1938, §§ 1 et seq., 3 (j), 7, 29 U.S.C.A. §§ 201 et seq., 203(j), 207.—Noonan v. Fruco Const. Co., 140 F.2d 633.—Commerce 62.47.

C.C.A.8 (Mo.) 1943. Guards employed to protect premises during construction of building to be used for manufacture of munitions for transmission outside state were not engaged in "production of goods for commerce" so as to be entitled to benefit of overtime provisions of Fair Labor Standards Act; their occupation not being "necessary" to production of goods for commerce. Fair Labor Standards Act of 1938, §§ 1 et seq., 3(j), 7, 29 U.S.C.A. §§ 201

et seq., 203(j), 207.—Noonan v. Fruco Const. Co., 140 F.2d 633.—Commerce 62.63.

C.C.A.2 (N.Y.) 1944. The word "necessary" in the Fair Labor Standards Act relating to production of goods for commerce is not to be construed so rigidly as to include within the Act only those essential to the actual manufacture of the goods. Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C.A. § 201 et seq.—Callus v. 10 East Fortieth St. Bldg., 146 F.2d 438, certiorari granted 10 East 40th Street Building, Inc. v. Callus, 65 S.Ct. 678, 324 U.S. 833, 89 L.Ed. 1399, reversed 65 S.Ct. 1227, 325 U.S. 578, 89 L.Ed. 1806, 161 A.L.R. 1263.—Commerce 62.47.

C.C.A.3 (Pa.) 1941. Watchmen, carpenters and porter employed by owner who leased his building to tenants, a number of whom manufactured goods which were shipped in interstate commerce, were engaged in "production of goods for commerce" so as to be entitled to benefit of wage and hour provisions of Fair Labor Standards Act of 1938, notwithstanding that they had no actual physical contact with such goods and that their services were not necessary in the sense of being indispensable, where their services were "necessary" in that they were both convenient and appropriate to maintenance of building suitable for manufacture of goods for commerce. Fair Labor Standards Act of 1938, §§ 6, 7, 29 U.S.C.A. §§ 206, 207.—Fleming v. A. B. Kirschbaum Co., 124 F.2d 567, certiorari granted 62 S.Ct. 800, 315 U.S. 792, 86 L.Ed. 1195, affirmed Kirschbaum v. Walling, 62 S.Ct. 1116, 316 U.S. 517, 86 L.Ed. 1638.—Commerce 62.63.

E.D.Ark. 1996. It was "necessary" for railroad to condemn private property for construction of intermodal facility, despite condemnees' claim that railroad already owned other land upon which it could build its facility; railroad's representatives testified that land it currently owned was too small to accommodate proposed facility, and they further testified that there was definite need for intermodal project and that it would significantly reduce future transportation costs. Fed.Rules Civ.Proc.Rule 71A(f), 28 U.S.C.A.—Missouri Pacific R. Co. v. 55 Acres of Land Located in Crittenden County, Ark., 947 F.Supp. 1301.—Em Dom 56.

E.D.Ark. 1996. Test for whether condemnation is "necessary" under Arkansas law is not one of strict necessity. Fed.Rules Civ.Proc.Rule 71A(f), 28 U.S.C.A.—Missouri Pacific R. Co. v. 55 Acres of Land Located in Crittenden County, Ark., 947 F.Supp. 1301.—Em Dom 56.

E.D.Ark. 1967. In order to establish easement by implication, it must appear not only that easement was obvious and apparently permanent but also that it was reasonably necessary for enjoyment of property, the term "necessary" meaning that there could be no other reasonable mode of enjoying dominant tenement without easement.—U.S. v. Thompson, 272 F.Supp. 774, affirmed 408 F.2d 1075.—Ease 15.1.

C.D.Cal. 1997. Remediation costs are "necessary" and thus recoverable under CERCLA when undertaken in response to an actual and real threat

to human health or the environment. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f), 42 U.S.C.A. §§ 9607(a), 9613(f).—Carson Harbor Village, Ltd. v. Unocal Corp., 990 F.Supp. 1188, affirmed in part, reversed in part 227 F.3d 1196, rehearing en banc granted 240 F.3d 841, opinion withdrawn and superseded on rehearing 270 F.3d 863, certiorari denied 122 S.Ct. 1437, 535 U.S. 971, 152 L.Ed.2d 381.—Environ Law 446.

C.D.Cal. 1997. To establish that a remediation cost is “necessary” and recoverable under CERCLA, plaintiff must establish that an actual and real threat exists prior to initiating a response action, and when conditions at site do not pose any plausible threat to the environment, the response cannot be deemed necessary, and recovery must be denied. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f), 42 U.S.C.A. §§ 9607(a), 9613(f).—Carson Harbor Village, Ltd. v. Unocal Corp., 990 F.Supp. 1188, affirmed in part, reversed in part 227 F.3d 1196, rehearing en banc granted 240 F.3d 841, opinion withdrawn and superseded on rehearing 270 F.3d 863, certiorari denied 122 S.Ct. 1437, 535 U.S. 971, 152 L.Ed.2d 381.—Environ Law 446.

C.D.Cal. 1997. For a remediation action to be “necessary” under CERCLA and eligible for cost recovery, determination must be made before remediation is undertaken that a threat to health or environment exists, and such determination cannot be made after remediation is undertaken. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f), 42 U.S.C.A. §§ 9607(a), 9613(f).—Carson Harbor Village, Ltd. v. Unocal Corp., 990 F.Supp. 1188, affirmed in part, reversed in part 227 F.3d 1196, rehearing en banc granted 240 F.3d 841, opinion withdrawn and superseded on rehearing 270 F.3d 863, certiorari denied 122 S.Ct. 1437, 535 U.S. 971, 152 L.Ed.2d 381.—Environ Law 446.

E.D.Cal. 1993. Generally, investigative costs incurred by a private party after the Environmental Protection Agency (EPA) has initiated a remedial investigation, unless authorized by the EPA, are duplicative and therefore not recoverable under CERCLA; also, where costs had been incurred solely to defend against government’s action, they are not “necessary” within meaning of provision allowing private parties to recover response costs which are “necessary.” Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), as amended, 42 U.S.C.A. § 9607(a)(4)(B).—Louisiana-Pacific Corp. v. Beazer Materials & Services, Inc., 811 F.Supp. 1421.—Environ Law 446.

N.D.Cal. 2001. CERCLA response costs were not “necessary,” and thus not recoverable from responsible party, if they were duplicative of other costs, wasteful, or otherwise unnecessary to address hazardous substances at issue. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), 42 U.S.C.A. § 9607(a)(4)(B).—Waste Management of Alameda

County, Inc. v. East Bay Regional Park Dist., 135 F.Supp.2d 1071.—Environ Law 446.

N.D.Cal. 1942. Within Fair Labor Standards Act providing that an employee is engaged in production of goods for commerce if he is employed in any process or occupation necessary to the production thereof, the word “necessary” does not denote absolute indispensability but if the work performed is convenient and appropriate or essential and beneficial to production it is necessary within the act. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—Lorenzetti v. American Trust Co., 45 F.Supp. 128.—Commerce 62.44(1), 62.47.

S.D.Cal. 1963. Under statute providing for deduction for all “necessary” expenses incurred in carrying on a business, the quoted word does not mean indispensable. 26 U.S.C.A. (I.R.C.1954) § 162(a)(2).—Adelson v. U.S., 221 F.Supp. 31, affirmed 342 F.2d 332.—Int Rev 3318.

S.D.Cal. 1946. In determining whether employees are engaged in an occupation “necessary” to production of goods for commerce within Fair Labor Standards Act, test of what is “necessary” is not indispensability, but actual use. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—Walling v. Thompson, 65 F.Supp. 686.—Commerce 62.44(1).

S.D.Cal. 1946. Business of company installing and servicing burglar alarms was “necessary” within meaning of provision of the Fair Labor Standards Act bringing within its ambit all engaged in any process or occupation “necessary” to the production of goods for commerce. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—Walling v. Thompson, 65 F.Supp. 686.—Commerce 62.49.

S.D.Cal. 1943. The word “necessary,” as used in section of Bankruptcy Act giving priority of payment to actual and necessary cost of preserving bankrupt’s estate subsequent to filing of petition, refers to what is reasonably advisable in order to preserve bankrupt’s estate from further dissipation, so that sufficient assets are available to liquidate claims of general creditors prior to discharge. Bankr.Act § 64, sub. b, 11 U.S.C.A. § 104, sub. b.—In re Hoffman, 49 F.Supp. 245.—Bankr 2962.

D.Colo. 1994. Attorney is “necessary” witness for purposes of rule of professional conduct prohibiting lawyer from acting as advocate at trial in which lawyer is likely to be necessary witness, if his or her testimony is relevant, material, and unobtainable elsewhere. U.S.Dist.Ct.Rules D.Colo., Rule 83.6; Colo.Rules of Prof.Conduct, Rule 3.7.—World Youth Day, Inc. v. Famous Artists Merchandising Exchange, Inc., 866 F.Supp. 1297.—Atty & C 22.

D.Conn. 1974. Even if medicaid payments are limited to payments for “necessary” medical services, an elective abortion, not performed to avoid any physical or psychiatric impairment, is “necessary” within such implied limitation and, therefore, state regulation precluding payment for an abortion under medicaid program unless welfare recipient has secured prior medical certification that an abor-

tion is necessary was invalid. Social Security Act, §§ 1862(a)(1), 1901 et seq., 1902(a), (a)(10), (10)(B)(i), 1905, 1905(a)(6), 42 U.S.C.A. §§ 1395y(a)(1), 1396 et seq., 1396a(a), (a)(10), (10)(B)(i), 1396d, 1396d(a)(6).—*Roe v. Norton*, 380 F.Supp. 726, reversed 522 F.2d 928, on remand 408 F.Supp. 660, probable jurisdiction noted *Maier v. Roe*, 96 S.Ct. 3219, 428 U.S. 908, 49 L.Ed.2d 1216, stay denied 97 S.Ct. 351, 429 U.S. 935, 50 L.Ed.2d 306, reversed 97 S.Ct. 2376, 432 U.S. 464, 53 L.Ed.2d 484.—*Health* 480.

D.Del. 1972. Under traditional test, challenged state law must be allowed to stand unless court is convinced that law has no permissible objective or, given valid objective, that there is no rational basis for means selected, but if challenged law directly affects a fundamental or basic right or draws lines which result in suspect classification, burden is upon proponents to make clear showing that burden imposed is necessary to protect a compelling and substantial governmental interest; "necessary" means that there is no other alternative to protect governmental interest involved which would involve lesser burden on right restricted, and challenged law must be precisely tailored to objective and even if classification may have some tendency to promote permissible interest, law cannot stand if it excludes too many people who should not, and need not, be excluded. U.S.C.A.Const. Amend. 14.—*Wellford v. Battaglia*, 343 F.Supp. 143, affirmed 485 F.2d 1151.—*Const Law* 48(8).

D.D.C. 1996. In determining whether party is "necessary" under compulsory joinder rule, court must consider whether complete relief can be accorded among existing parties and whether absent party has legally protected interest in subject of suit. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—*Cherokee Nation of Oklahoma v. Babbitt*, 944 F.Supp. 974, reversed 117 F.3d 1489, 326 U.S.App. D.C. 139.—*Fed Civ Proc* 202.

D.D.C. 1996. To show that investigative costs are "necessary" within meaning of CERCLA, party seeking recovery must demonstrate that costs were incurred in response to threat to human health or environment and that costs were necessary to address that threat; costs must be precipitated by release of hazardous substance and necessary to remediation thereof. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4), 42 U.S.C.A. § 9607(a)(4).—*Foster v. U.S.*, 926 F.Supp. 199.—*Environ Law* 446.

D.D.C. 1996. In order to show that any response costs were "necessary" under CERCLA, plaintiff must show that costs were incurred in response to threat to human life or environment, and that costs were necessary to address that threat; to extent that site investigations and abatement actions were taken for purposes other than responding to actual and real public threat, there is no CERCLA liability. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4), 42 U.S.C.A. § 9607(a)(4).—*Foster v. U.S.*, 922 F.Supp. 642.—*Environ Law* 446.

D.D.C. 1993. Sentencing Commission acted within its statutory authority when it created an advisory working group on environmental sanctions and permitted the group to meet in private to formulate proposals to assist Commission in developing Sentencing Guidelines as to environmental offenses committed by organizations; Commission's authority to accept and employ voluntary and uncompensated services by individuals was not limited to accepting voluntary services only when those services were "necessary" in narrowest sense of term. 28 U.S.C.A. §§ 994(a, b, x), 995.—*Washington Legal Foundation v. U.S. Sentencing Com'n*, 826 F.Supp. 10, affirmed in part, reversed in part 17 F.3d 1446, 305 U.S.App.D.C. 93, appeal after remand 89 F.3d 897, 319 U.S.App.D.C. 256.—*Admin Law* 121; *U S* 29.

D.D.C. 1987. Term "necessary" in provision of Wilderness Act authorizing Secretary of Agriculture to carry out such measures within wilderness area as may be necessary in control of fire, insects, and disease allows Secretary to use measures that fall short of full effectiveness so long as measures are reasonably designed to restrain or limit threatened spread of insect infestation from wilderness land on to neighboring property to its detriment. Wilderness Act, § 4(d)(1), 16 U.S.C.A. § 1123(d)(1).—*Sierra Club v. Lyng*, 663 F.Supp. 556.—*Agric* 9.

D.D.C. 1983. Where acute care hospital organized a subsidiary corporation to operate group practice outpatient centers and made interest-free loans to the subsidiary from working capital and hospital thereafter borrowed money to finance a new hospital facility, the entire amount of interest was neither "necessary" nor "necessary and proper" for purpose of part A medicare reimbursement and reimbursement was properly reduced by imputing interest on funds advanced to the subsidiary, notwithstanding that medicare part B provides reimbursement for treatment in an ambulatory clinic. Social Security Act, §§ 1832(a)(2)(F), 1861(v)(1)(A), 42 U.S.C.A. §§ 1395k(a)(2)(F), 1395x(v)(1)(A); Public Health Service Act, §§ 328(b)(1), 1502(a)(1, 13), 42 U.S.C.A. §§ 254a-1(b)(1), 300k-2(a)(1, 13); National Health Planning and Resources Development Act of 1974, § 2(a)(4), 42 U.S.C.A. § 300k(a)(4).—*Portland Adventist Medical Center v. Heckler*, 561 F.Supp. 1092.—*Health* 535(4).

D.D.C. 1978. For purposes of rule that when criminal defendant objects to declaration of mistrial retrial is barred unless mistrial was result of "manifest necessity," no mechanical rule exists for determination of "manifest necessity," but standard does not require that mistrial be "necessary" in a strict literal sense; necessary to determination of whether mistrial is result of "manifest necessity" are the careful weighing of defendant's right to have his trial completed by particular tribunal and public's interest in fair trial and just judgment. U.S.C.A.Const. Amend. 5.—*U.S. v. Lynch*, 467 F.Supp. 575, affirmed 598 F.2d 132, 194 U.S.App. D.C. 213, certiorari denied 99 S.Ct. 1287, 440 U.S. 939, 59 L.Ed.2d 498, appeal after remand U.S. v.

Bruner, 657 F.2d 1278, 212 U.S.App.D.C. 36.—Double J 99.

N.D.Ga. 1999. To show that any response costs were “necessary,” allowing their recovery under CERCLA, private litigant must show: (1) that costs were incurred in response to threat to human health or environment that existed prior to initiation of response action and (2) that costs were necessary to address that threat. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), 42 U.S.C.A. § 9607(a)(4)(B).—Southfund Partners III v. Sears, Roebuck and Co., 57 F.Supp.2d 1369.—Environ Law 446.

N.D.Ga. 1999. Where no costs were needed to make property safe for its current use as industrial site, response costs incurred to remove low level contamination in order to prepare site for residential use were not “necessary,” and thus not recoverable from former owner under CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), 42 U.S.C.A. § 9607(a)(4)(B).—Southfund Partners III v. Sears, Roebuck and Co., 57 F.Supp.2d 1369.—Environ Law 446.

N.D.Ill. 1947. Functions performed by patrolmen or guards are “necessary” to production of goods for interstate commerce within rule that an employee whose duties are necessary in manufacture or processing of goods of an employer engaged in interstate commerce, is likewise “engaged in interstate commerce” within Fair Labor Standards Act. Fair Labor Standards Act of 1938, §§ 1–19, 29 U.S.C.A. §§ 201–219.—Moehl v. E. I. Du Pont De Nemours & Co., 84 F.Supp. 427.—Commerce 62.63.

N.D.Ill. 1932. “Necessary” police power delegated by Legislature to city council does not mean indispensable power, but power conferred to pass all reasonable ordinances conducive to promotion of inhabitants’ health, safety, and welfare. S.H.A. ch. 24, §§ 23–8, 23–10, 23–105.—Capitol Taxicab Co. v. Cermak, 60 F.2d 608.—Mun Corp 589.

S.D.Ill. 1994. In order to show that any response costs were “necessary,” as required to recover under CERCLA, plaintiffs must demonstrate that they responded to threat to public health or environment, and theoretical threat is not enough; for response costs to be “necessary,” plaintiffs must establish that actual and real public health threat exists prior to initiating response action. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), 42 U.S.C.A. § 9607(a)(4)(B).—G.J. Leasing Co., Inc. v. Union Elec. Co., 854 F.Supp. 539, affirmed 54 F.3d 379.—Environ Law 446.

N.D.Ind. 1991. For purposes of rejecting collective bargaining agreement, debtor has burden of proving modifications to employee benefits and protections in debtor’s required proposal are “necessary”; this means debtor must prove proposal was made in good faith and that it contains necessary, but not absolutely minimal, changes that will enable debtor to complete the reorganization pro-

cess successfully. Bankr.Code, 11 U.S.C.A. § 1113(b)(1)(A).—International Union, United Auto., Aerospace and Agr. Implement Workers of America, UAW v. GATKE Corp., 151 B.R. 211.—Bankr 3113.

S.D.Ind. 1998. If attorney’s testimony is not relevant or is only marginally relevant, it certainly is not “necessary,” within meaning of Indiana Rule of Professional Conduct generally prohibiting attorney from acting as advocate at trial in which attorney is likely to be necessary witness. Ind.Rules of Prof.Conduct, Rule 3.7.—Harter v. University of Indianapolis, 5 F.Supp.2d 657.—Atty & C 22.

E.D.La. 1969. Pilotage is a “necessary” within Federal Maritime Lien Act providing liens for necessities. Ship Mortgage Act, 1920, § 30, subsecs. P–T, 46 U.S.C.A. §§ 971–975.—Ajubita v. S/S Peik, 313 F.Supp. 1238, affirmed 428 F.2d 1345.—Mar Liens 25.

D.Md. 2002. Fact finding was “necessary” to prior judgment, for collateral estoppel purposes, even if it was not indispensable to judgment.—In re Microsoft Corp. Antitrust Litigation, 232 F.Supp.2d 534.—Judgm 725(1).

D.Md. 1999. Cost of purchasing liability insurance for members of equity holders’ committee would be allowed as administrative expense, as “actual” and “necessary” cost of members’ service on committee, where lack of liability insurance for equity committee members would likely result in the committee being left with only two members and might result in its dissolution, where there was no evidence that trustee intended to solicit new committee members to replace those who had already resigned out of fear of possible litigation, and where having committee was particularly important in debtor’s large and complex Chapter 11 case due to the significant investment in debtor by large body of shareholders who could not otherwise effectively participate in case. Bankr.Code, 11 U.S.C.A. § 503(b)(3)(F).—McDow v. Official Committee of Equity Sec. Holders of Criimi Mae Inc., 247 B.R. 146.—Bankr 2872.

D.Md. 1961. Food is a “necessary” within meaning of statutory provision precluding maritime liens for repairs, supplies or other “necessaries” ordered by charterer precluded from encumbering vessel where its furnisher could, by reasonable diligence, have discovered lack of authority. Ship Mortgage Act, 1920, § 30, sub. R, 46 U.S.C.A. § 973.—Diaz v. The Seathunder, 191 F.Supp. 807.—Mar Liens 30.

D.Md. 1948. Preparation of plans and specifications for original buildings, or additions or alterations therein, which might be used for production of goods for commerce, by employees of firm of consulting engineers and architects did not constitute an activity by such employees in an occupation “necessary” to production of goods for commerce, so as to bring them within Fair Labor Standards Act. Fair Labor Standards Act of 1938 § 1 et seq., 3(i, j), 29 U.S.C.A. §§ 201 et seq., 203(i, j).—McComb v. Turpin, 81 F.Supp. 86.—Commerce 62.51, 62.62.

D.Md. 1942. Where it did not affirmatively appear that patrolman service furnished by independent contractor to occupants of buildings scattered throughout city, 37 per cent. of whom were engaged in interstate commerce in whole or in part, was necessary to the production of goods by subscribing occupants for interstate commerce, employees of independent contractor were not entitled to benefits of Fair Labor Standards Act as being engaged in a process or operation "necessary" to production of goods for interstate commerce. Fair Labor Standards Act of 1938, §§ 1-19, and §§ 3(b, i, j), 6, 7, 29 U.S.C.A. §§ 201-219, and §§ 203(b, i, j), 206, 207.—*Bartholome v. Baltimore Fire Patrol & Despatch Co. of Baltimore City*, 48 F.Supp. 98.—Commerce 62.49, 62.63.

D.Md. 1942. Provision of Fair Labor Standards Act providing that any person engaged in any process or operation "necessary" to the production of goods shall be deemed to have been engaged in the production thereof, uses the quoted word as connoting at least substantially necessary. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—*Bartholome v. Baltimore Fire Patrol & Despatch Co. of Baltimore City*, 48 F.Supp. 98.—Commerce 62.47.

D.Mass. 1997. University's requirement that student seeking reasonable accommodation on basis of learning disability provide university with results of professional evaluation conducted within three years prior to application for admission was not "necessary" to process of accommodating students previously diagnosed with specific learning disorders, or to ensure proper documentation and prevent overdiagnosis, within meaning of Americans with Disabilities Act (ADA) and Rehabilitation Act. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Guckenberger v. Boston University*, 974 F.Supp. 106.—Civil R 127.1.

D.Mass. 1997. University's requirement that student seeking accommodation on basis of learning disability provide university with results of professional evaluation conducted within three years prior to application for admission was "necessary" to process of accommodating students diagnosed with attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD), within meaning of Americans with Disabilities Act (ADA) and Rehabilitation Act. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Guckenberger v. Boston University*, 974 F.Supp. 106.—Civil R 127.1.

D.Mass. 1997. University's requirement that students seeking accommodation on basis of learning disability provide university with results of professional evaluation conducted by medical doctor, licensed clinical psychologist, or individuals with particular doctorate degrees was "necessary" to process of accommodating students diagnosed with attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD), within meaning of Americans with Disabilities Act (ADA) and

Rehabilitation Act. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Guckenberger v. Boston University*, 974 F.Supp. 106.—Civil R 127.1.

D.Mass. 1925. Use of canal held "necessary." Under Merchant Marine Act, Sec. 30, subsec. P (Comp. St. Ann. Supp. 1923, Sec. 8146 1/4000), amending Act June 23, 1910, Sec. 1, and broadening its scope as to necessities, the use of Cape Cod Canal is "necessary," and the charge for such use is secured by a maritime lien.—*In re Burton S.S. Co.*, 3 F.2d 1015.—Mar Liens 25.

D.Mass. 1925. Use of canal held a "necessary."—*In re Burton S.S. Co.*, 3 F.2d 1015.—Mar Liens 25.

D.Minn. 1995. Property owner who leased his land to school district was not a "necessary" party to action brought by taxpayers against district, religious association, and property owner stemming from written agreement entered into by district, association, and property owner for operation of public elementary school: taxpayers' establishment clause challenge was really directed at actions of district and association and not at property owner and if agreement was found to be unlawful, property owner would not be able to enforce it whether he was party to this litigation or not. U.S.C.A. Const. Amend. 1; Fed. Rules Civ. Proc. Rule 19, 28 U.S.C.A.—*Stark v. Independent School Dist. No. 640*, 163 F.R.D. 557.—Fed Civ Proc 224.

D.Minn. 1993. In order for expense to be "actual" and "necessary," as required for administrative expense, debtor must have made some actual use of asset. Bankr. Code, 11 U.S.C.A. § 503(b)(1)(A).—*In re Litho Specialties, Inc.*, 154 B.R. 733.—Bankr 2876.

D.Minn. 1991. Termination fee paid to debtor's former president and chief executive officer was not "actual" and "necessary" cost of maintaining bankruptcy estate, within meaning of bankruptcy statute regarding payment of administrative claims. Bankr. Code, 11 U.S.C.A. § 503(b)(1)(A).—*In re Bartley Lindsay Co.*, 137 B.R. 305.—Bankr 2871.

E.D.Mo. 1995. Purchaser's costs associated with its cleanup of asbestos and polychlorinated biphenyls (PCBs) were not "necessary" within meaning of CERCLA for purposes of private cost recovery action against vendors, in light of evidence that purchaser undertook investigation and abatement actions to place site in condition to use it in trucking operations, and absent any evidence of immediate threat to public health or environment at site; no persuasive evidence indicated possibility that PCBs or asbestos would migrate into river, and purchaser removed PCBs and asbestos from separate parcel at site two years before commencing cleanup of parcel at issue. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), as amended, 42 U.S.C.A. § 9607(a)(4)(B).—*Yellow Freight System, Inc. v. ACF Industries, Inc.*, 909 F.Supp. 1290.—Environ Law 446.

D.Neb. 1995. Internal Revenue Service (IRS) agent's disclosure to confidential informant that search warrant was going to be issued against taxpayer was not "necessary" to get information regarding taxpayer, so that disclosure was not properly made for investigatory purposes, in absence of evidence why facts and circumstances of case necessitated specific disclosures that were made. 26 U.S.C.A. § 6103(k)(6).—*Jones v. U.S.*, 898 F.Supp. 1360, affirmed in part, reversed in part 97 F.3d 1121, on remand 954 F.Supp. 191, affirmed 207 F.3d 508, rehearing and rehearing denied, on remand 2000 WL 33697660, affirmed 255 F.3d 507.—Int Rev 4482.

D.N.J. 1997. Eligibility requirements are "essential" or "necessary", and thus permissible under the ADA, when they are reasonably necessary to accomplish the purposes of a program. Americans with Disabilities Act of 1990, § 302(b)(2)(A)(i, ii), 42 U.S.C.A. § 12182(b)(2)(A)(i, ii).—*Bowers v. National Collegiate Athletic Ass'n*, 974 F.Supp. 459.—Civil R 107(1).

D.N.J. 1994. Use of expert witness was not "necessary" for preparation of parent's case under IDEA for mediation, so that court would award only \$100 of witness' \$500 fee; witness was retained with eye toward preparing for future administrative hearing, and expert did not prepare written report or appear or testify at mediation. Individuals with Disabilities Education Act, § 615(e)(4)(B), as amended, 20 U.S.C.A. § 1415(e)(4)(B).—*E.M. v. Millville Bd. of Educ.*, 849 F.Supp. 312.—Schools 155.5(5).

E.D.N.Y. 1980. To pass strict scrutiny, a law or regulation challenged as violating equal protection must be a necessary element for achieving a governmental interest, and to be viewed as "necessary" the classification or infringement must be the least burdensome means available for attaining the governmental objective. U.S.C.A.Const. Amends. 5, 14, § 1.—*Greenberg v. Bolger*, 497 F.Supp. 756.—Const Law 213.1(2).

N.D.N.Y. 2001. Term "necessary" in Telecommunications Act section requiring incumbent local exchange carrier (ILEC) to provide physical collocation of equipment as necessary for competitors' interconnection or access to unbundled network elements at ILEC's premises does not extend to equipment that is merely "used" or "useful" for either interconnection or access to unbundled network elements; rather, such equipment must be required, or indispensable to interconnections or access to unbundled network elements. Telecommunications Act of 1996, 47 U.S.C.A. § 251(c)(6).—*MCI Telecommunications Corp. v. New York Telephone Co.*, 134 F.Supp.2d 490.—Tel 267.

S.D.N.Y. 1996. Environmental Protection Agency's (EPA) decision that secondary lead smelting plant's production rate data was "effluent data" ineligible for confidential treatment under Freedom of Information Act's (FOIA) exemption for trade secrets or confidential business information was not arbitrary, capricious or otherwise abuse of discre-

tion, regardless of whether data was actually used to determine compliance with Clean Water Act (CWA); pollutant limits applicable to plant were expressed in terms of pounds of pollutant per million pounds of lead produced from smelting and, thus, it was reasonable to conclude that production rate data was "necessary," within meaning of regulation defining effluent data, to determine amount of pollutants plant was authorized to discharge. 5 U.S.C.A. §§ 552(a), (b)(4), 706(2)(A); Federal Water Pollution Control Act Amendments of 1972, §§ 301(a), 308(a, b), 33 U.S.C.A. §§ 1311(a), 1318(a, b); 40 C.F.R. §§ 2.208, 2.302(a)(2)(i)(B), (e), 403.12(e)(1, 3), 421.135(b).—*RSR Corp. v. Browner*, 924 F.Supp. 504, opinion vacated.—Records 59.

S.D.N.Y. 1995. In order for costs to be "necessary" under CERCLA, threat to public health or environment in response to which cost is incurred must exist prior to initiation of response action, and cost must be necessary to address threat; actions taken for purposes aside from responding to actual public health threat do not meet CERCLA requirements. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), 42 U.S.C.A. § 9607(a)(4)(B).—*Prisco v. State of N.Y.*, 902 F.Supp. 374.—Environ Law 446.

S.D.N.Y. 1992. In determining whether attorney's testimony is "necessary," and therefore whether attorney's law firm may be disqualified from representing party under New York law, court should consider such factors as significance of the matter, weight of testimony, and availability of other evidence. N.Y.Ct.Rules, § 1200.21[DR 5-102(b)].—*Parke-Hayden, Inc. v. Loews Theatre Management Corp.*, 794 F.Supp. 525.—Atty & C 22.

S.D.N.Y. 1991. Prepaid insurance covering some damages to maritime containers leased to operator of shipping line was "necessary" within meaning of Federal Maritime Lien Act; such insurance was something prudent vessel owner would provide. Ship Mortgage Act, 1920, § 30, Subsec. P, 46 U.S.C.(1988 Ed.) § 971 et seq.—*Itel Containers Intern. Corp. v. Atlanttrafik Exp. Service Ltd.*, 781 F.Supp. 975, reversed 982 F.2d 765.—Mar Liens 23.

S.D.N.Y. 1961. Under airline carriers tariff rule accepting for transportation as baggage such personal property as was "necessary" or "appropriate" for "convenience" of passenger for purposes of his trip, carrying of sample case of jewelry by jewelry salesman on a sales trip was "necessary" and "appropriate" for his "convenience" for the purposes of his trip.—*Vogelsang v. Delta Air Lines, Inc.*, 193 F.Supp. 613, affirmed 302 F.2d 709, certiorari denied 83 S.Ct. 46, 371 U.S. 826, 9 L.Ed.2d 65.—Carr 387.

S.D.N.Y. 1950. Under law of Delaware requiring a showing of recourse to the stockholders only "if necessary", to correct illegal acts of directors recourse to stockholders is "necessary" only when stockholder action is feasible.—*Steinberg v. Adams*, 90 F.Supp. 604.—Corp 320(2).

N.D.Ohio 1996. City's costs for contractors' monitoring, assessment and evaluation of extent of benzene and other hazardous contamination of right-of-way and adjacent hot spots were "necessary" response costs for purposes of city's CERCLA claims against prior owners and operators of site; contractors's investigation and findings confirmed presence of benzene contamination. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(4)(B), 42 U.S.C.A. § 9607(a)(4)(B).—*City of Toledo v. Beazer Materials and Services, Inc.*, 923 F.Supp. 1001.—*Environ Law* 446.

W.D.Okla. 1998. "Necessary" services, for purposes of section authorizing bankruptcy courts to award reasonable compensation for actual and necessary services rendered by attorneys, are those that service and benefit debtor's estate. Bankr.Code, 11 U.S.C.A. § 330.—*In re Pappas & Rose, P.C.*, 229 B.R. 815.—*Bankr* 3182.

D.Or. 2002. Party is "necessary," for purpose of joinder, when: (1) complete relief is not possible without absent party's presence, or (2) absent party claims legally protected interest in action. Fed. Rules Civ.Proc.Rule 19, 28 U.S.C.A.—*City of Lincoln City v. U.S. Department of Interior*, 229 F.Supp.2d 1109.—*Fed Civ Proc* 202.

E.D.Pa. 1993. What constitutes a "necessary" for purposes of minor's ability to disaffirm contract is not fixed rule, but is question of fact that depends on such factors as minor's standard of living and particular circumstances, and ability and willingness of minor's parent or guardian, if any, to supply needed services or articles.—*Rivera v. Reading Housing Authority*, 819 F.Supp. 1323, affirmed *Rodriguez v. Reading Housing Authority*, 8 F.3d 961.—*Infants* 50, 58(1).

E.D.Pa. 1993. Absent parties' nonresponse to notice inviting them to inform court how they felt their interests would be affected by joinder or nonjoinder was one of fact that strongly militated against designating absent parties as "necessary." Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.—*Scott Paper Co. v. National Cas. Co.*, 151 F.R.D. 577.—*Fed Civ Proc* 202.

E.D.Pa. 1992. Proffered new value contributions by equity holders to Chapter 11 plan were not "necessary" to reorganization so as to satisfy requirements for new value exception to absolute priority rule, where partner's contribution, bulk of which would be used for partial payment of preexisting debt to objecting creditor, would not facilitate reorganization since creditor provided no service to debtor which was vital to continued operation of business. Bankr.Code, 11 U.S.C.A. § 1129(b)(2)(B)(ii).—*In re Sovereign Group 1985-27, Ltd.*, 142 B.R. 702.—*Bankr* 3561.

E.D.Pa. 1991. Task performed by counsel is "necessary," so as to be compensable, if it reasonably facilitates successful representation of debtor or estate. Bankr.Code, 11 U.S.C.A. § 330(a)(1).—*In re Rheam of Indiana, Inc.*, 133 B.R. 325, on remand 137 B.R. 151, vacated 142 B.R. 698.—*Bankr* 3182.

E.D.Pa. 1974. Successful bidders were "necessary" parties to action wherein low bidder charged that improprieties in acceptance of other bids for alteration and repair work at naval air station violated Armed Services Procurement Act, related regulations and due process, but failure to join successful bidders as parties did not require dismissal of complaint where there had been no attempt to join them as parties. 5 U.S.C.A. § 702; 10 U.S.C.A. §§ 2301 et seq., 2305; U.S.C.A.Const. Amend. 5; 28 U.S.C.A. §§ 1331, 1361, 2201, 2202; Fed.Rules Civ.Proc. rule 19(a, b), 28 U.S.C.A.—*A. & M. Gregos, Inc. v. Robertory*, 384 F.Supp. 187.—*Decl Judgm* 295, 328.

E.D.Pa. 1941. The word "necessary," in Fair Labor Standards Act providing that an employee shall be deemed to have been engaged in the production of goods if such employee was employed in any occupation necessary to the production thereof, cannot be interpreted to mean indispensable, since to do so would be to deny a liberal construction to a "remedial act" contrary to the fundamental canon for the interpretation of statutes. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—*Fleming v. A. B. Kirschbaum Co.*, 38 F.Supp. 204, affirmed 124 F.2d 567, certiorari granted 62 S.Ct. 800, 315 U.S. 792, 86 L.Ed. 1195, affirmed *Kirschbaum v. Walling*, 62 S.Ct. 1116, 316 U.S. 517, 86 L.Ed. 1638.—*Commerce* 62.44(2), 62.47.

W.D.Pa. 1948. In the federal courts parties may be classified as formal or nominal, proper or necessary, and indispensable, and by technical usage "necessary" is used in contradistinction to "indispensable."—*Steinberg v. American Bantam Car Co.*, 76 F.Supp. 426, appeal dismissed 173 F.2d 179.—*Fed Civ Proc* 201.

W.D.Pa. 1948. In proceeding by an independent stockholder on behalf of stockholders' committee to enjoin election of directors and voting of proxies until 3,000 widely scattered shareholders could be informed of true conditions and a fair and representative meeting be held, those shareholders who gave proxy authorizations to individuals designated by the incumbent Board of Directors were "necessary" though not "indispensable" parties.—*Steinberg v. American Bantam Car Co.*, 76 F.Supp. 426, appeal dismissed 173 F.2d 179.—*Corp* 201.

D.R.I. 1997. Loan to corporation which owned lobster boat for purpose of paying monthly insurance premium for boat provided a "necessary" to the boat within meaning of the Federal Maritime Lien Act, entitling lender to a maritime lien on the boat, where lender expected loan to be repaid out of earnings of vessel, and credit of corporation.—*Zitano v. F/V Diamond Girl*, 963 F.Supp. 109.—*Mar Liens* 24.

D.S.C. 1993. Wharfage and dockage services are "necessary" to operation of vessel, and are therefore "maritime" in nature and capable of supporting maritime liens.—*South Carolina State Ports Authority v. M/V Tyson Lykes*, 837 F.Supp. 1357, affirmed 67 F.3d 59.—*Mar Liens* 7.

D.S.D. 1997. In determining whether transportation of disabled child is "necessary" as related service under Individuals with Disabilities Education Act (IDEA), court considers child's age, distance he or she must travel, nature of area through which he or she must pass, his or her access to private assistance in making trip, and availability of other forms of public assistance in route, such as crossing guards or public transit. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq.—Malehorn on Behalf of Malehorn v. Hill City School Dist., 987 F.Supp. 772.—Schools 159.5(4).

D.S.D. 1997. Door-to-door transportation was not "necessary" for disabled student to benefit from her special education program, as required for such transportation to be considered "related service" school district was required to provide under Individuals with Disabilities Education Act (IDEA), despite fact that student's one-way trip to school was 13.5 miles, absent any evidence of average one-way distance traveled by other students; student was eight years old and capable of following directions not to walk out into traffic, and parent was able to provide transportation. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq.—Malehorn on Behalf of Malehorn v. Hill City School Dist., 987 F.Supp. 772.—Schools 159.5(4).

D.S.D. 1961. Advance deposit by taxpayers of \$23,000 on December 28 with elevator operator for feed to be delivered in future in connection with feeding operations of taxpayers, who reported their income for each calendar year on cash receipts and disbursement basis and who had never previously paid for feed in advance, was not "ordinary" nor "necessary" and was not an expense "paid" or "incurred" during the taxable year and was not deductible in computing taxpayers' 1957 income tax. 26 U.S.C.A. (I.R.C.1954) § 162(a).—Shippey v. U.S., 199 F.Supp. 842, affirmed 308 F.2d 743.—Int Rev 3373.

E.D.Tenn. 1998. Disabled student's post-graduation residential placement was not "necessary" for educational purposes, as required to entitle him to reimbursement for costs, thereof pursuant to Individuals with Disabilities Education Act (IDEA); student did not contest adequacy of services provided to him prior to graduation or school's determination that he had satisfied academic requirements for graduation, and his need for continued residential placement after graduation rested on medical considerations outside scope of IDEA. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq.—Daugherty By and Through Daugherty v. Hamilton County Schools, 21 F.Supp.2d 765, affirmed.—Schools 154(3).

N.D.Tex. 1996. To invoke "administrative convenience exception" to rule requiring debtor to classify all unsecured claims together, debtor must demonstrate that administrative convenience class is "necessary," that is, something more than just tending to ease administrative burden. Bankr.

Code, 11 U.S.C.A. § 1122(b).—In re Way Apartments, D.T., 201 B.R. 444.—Bankr 3550.

S.D.Tex. 1996. By requiring agencies to use methods "necessary" to conserve threatened or endangered species, Endangered Species Act (ESA) gives some measure of discretion to agency in determining necessary measures. Endangered Species Act of 1973, §§ 3(3), 7(a)(1), as amended, 16 U.S.C.A. §§ 1532(3), 1536(a)(1).—Center for Marine Conservation v. Brown, 917 F.Supp. 1128.—Environ Law 528.

S.D.Tex. 1993. The terms "actual" and "necessary," for purposes of determining which costs and expenses of preserving bankruptcy estate are entitled to administrative priority treatment, must be narrowly construed to keep administrative expenses at minimum and preserve estate for benefit of all creditors. Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Eagle Bus Mfg., Inc., 158 B.R. 421.—Bankr 2871.

S.D.Tex. 1993. In determining whether proposed modifications to collective bargaining agreement are "necessary" to permit debtor's reorganization, "necessary" should not be equated with "essential" or "bare minimum"; rather, "necessity" requirement places on debtor the burden of proving that its proposal is made in good faith, and that it contains necessary, but not absolutely minimal, changes that will enable debtor to complete reorganization process successfully. Bankr.Code, 11 U.S.C.A. § 1113(c).—In re Appletree Markets, Inc., 155 B.R. 431.—Bankr 3113.

S.D.Tex. 1987. Business' general liability policy with boat dealer's rider was not a maritime policy and could not give rise to maritime lien against pleasure craft in dealer's sales stock for unpaid premiums; that is, such insurance was not of the type that benefits vessels themselves so as to be considered a "necessary" for maritime lien purposes. Ship Mortgage Act, 1920, § 30, Subsec. P, 46 U.S.C.A. § 971.—Trident Marine Managers, Inc. v. M/V Serial No. CEBRF0661586, 688 F.Supp. 301.—Mar Liens 13.

E.D.Va. 1996. "Necessary," within meaning of Virginia statute exempting tools, including motor vehicles, necessary for use in course of household-er's occupation or trade, is neither technical term nor term of art and must be interpreted in accordance with its common meaning. Va.Code 1950, § 34-26(7).—In re Lyall, 191 B.R. 78, on remand 193 B.R. 767.—Exemp 45.

E.D.Va. 1991. Unpaid insurance premiums give rise to maritime lien under Federal Maritime Lien Act; insurance is "necessary" for purposes of section of Act providing that person furnishing "necessaries" to any vessel is entitled to federal maritime lien. 46 U.S.C.A. §§ 31301(4), 31329.—Flagship Group, Ltd. v. Peninsula Cruise, Inc., 771 F.Supp. 756.—Mar Liens 13.

E.D.Va. 1964. "Necessary" within statute allowing as deduction necessary expenses in carrying on trade or business does not mean absolutely neces-

sary. 26 U.S.C.A. (I.R.C.1954) §§ 162(a), 262.—*Warwick v. U.S.*, 236 F.Supp. 761.—Int Rev 3318.

E.D.Wash. 1994. Under rule regarding necessary parties, party is “necessary” if complete relief cannot be granted among existing parties or absent party has legally protected interest that might be impeded if case proceeds in its absence. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—*Cassidy v. U.S.*, 875 F.Supp. 1438.—Fed Civ Proc 202.

E.D.Wash. 1991. In context of claim for costs of environmental, biological and medical monitoring asserted against governmentally indemnified contractors in connection with releases from federal facility currently subject of ongoing § 9604 study by Agency for Toxic Substances and Disease Registry (ATSDR), such costs could not be regarded as “necessary” so as to entitle plaintiffs to private response cost recovery under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); plaintiffs’ claims are product of activities indistinguishable from those being performed by federal government at nuclear reservation pursuant to CERCLA, and such costs, to extent they differ or in any way deviated from those performed by government, could not be deemed “necessary.” Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 104(a)(1), (b)(1), (i), 107(a)(4), (a)(4)(A, B, D), 113(h), as amended, 42 U.S.C.A. §§ 9604(a)(1), (b)(1), (i), 9607(a)(4), (a)(4)(A, B, D), 9613(h).—In re Hanford Nuclear Reservation Litigation, 780 F.Supp. 1551.—Enviro Law 446.

E.D.Wis. 2001. “Necessary” within the context of the ADA means capable of providing direct amelioration of a problem facing qualified individuals with disabilities. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*Wisconsin Correctional Service v. City of Milwaukee*, 173 F.Supp.2d 842.—Civil R 107(1).

E.D.Wis. 1997. Absent party is “necessary,” for purposes of deciding whether lawsuit should be dismissed based on his or her nonjoinder, if complete relief cannot be granted among existing parties, or if absent party has some legally protected interest that might be impeded if lawsuit proceeds in his or her absence. Fed.Rules Civ.Proc.Rule 19(b), 28 U.S.C.A.—*Southeastern Sheet Metal Joint Apprenticeship Training Fund v. Barsuli*, 950 F.Supp. 1406.—Fed Civ Proc 202, 1747.

W.D.Wis. 1993. To determine whether party is “necessary,” court must determine whether relief requested against existing parties in complaint can be granted in absence of party. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.—*Forest County Potawatomi Community of Wisconsin v. Doyle*, 828 F.Supp. 1401, affirmed 45 F.3d 1079.—Fed Civ Proc 202.

D.Wyo. 1994. Subsidiary of public service company was “necessary” party in action brought by coal supplier against public service company alleging that public service company was liable for breach of guaranty of coal supply agreement with subsidiary, where, in order to determine if public service company was liable for breach of guaranty

agreement, it was inevitable that issue of subsidiary’s performance vel non, and its corresponding rights and obligations under coal supply agreements, would ipso facto be implicated. Fed.Rules Civ.Proc.Rule 19(a)(2)(i, ii), 28 U.S.C.A.—*Thunder Basin Coal Co. v. Tuco, Inc.*, 156 F.R.D. 665, affirmed 104 F.3d 1205.—Fed Civ Proc 211.

9th Cir.BAP (Cal.) 2002. Bankruptcy court abused its discretion by relying on power of court provision in Bankruptcy Code to trump denial of discharge provision in denying discharge to Chapter 7 debtor for alleged lack of records; although bankruptcy court utilized power of court provision on basis that complaint was deficient, use of power of court provision to deny discharge was not “necessary” in that case was tried on basis that there was lack of records and, consequently, deficiency could have been cured either by way of more definite statement or amendment to the complaint and there was no impediment to deciding merits of action. Bankr.Code, 11 U.S.C.A. §§ 105, 727.—In re Yadidi, 274 B.R. 843.—Bankr 2126, 3278.1.

9th Cir.BAP (Cal.) 1993. “Necessary” expense, such as professional may recover from bankruptcy estate, is one that was incurred because it was required to accomplish properly the task for which professional was employed. Bankr.Code, 11 U.S.C.A. § 330(a)(2).—In re Specialty Plywood, Inc., 160 B.R. 627, opinion withdrawn 166 B.R. 153.—Bankr 3159.

Bkrty.N.D.Ala. 1993. Chapter 11 debtor’s proposed modification of collective bargaining agreement, which proposal would have allowed debtor to barely break even, was shown to be “necessary” to permit reorganization, as required for rejection of collective bargaining agreement; alternative to proposal would be to sink \$1.5 million deeper into debt and, without proposed modifications, liquidation was inevitable. Bankr.Code, 11 U.S.C.A. § 1113.—In re Alabama Symphony Ass’n, 155 B.R. 556, affirmed in part, reversed in part 211 B.R. 65.—Bankr 3113.

Bkrty.S.D.Ala. 2001. Although value alone does not control whether an item is “necessary,” within meaning of Alabama personal property exemption for necessary and proper wearing apparel, it is a factor to consider. Ala.Code 1975, § 6-10-6.—In re Peterson, 280 B.R. 886.—Exemp 40.

Bkrty.S.D.Cal. 1997. To extent that work product of accountant employed by official creditors committee assisted committee in performance of its discretionary duties, such work may be found “necessary” within meaning of provision allowing reasonable compensation for necessary services. Bankr.Code, 11 U.S.C.A. §§ 330, 1103(c)(2).—In re Thrifty Oil Co., 205 B.R. 1009.—Bankr 3161.

Bkrty.D.Conn. 1998. Utility truck that residential building contractor used to move building materials and to lift trusses and large beams qualified as “tool of the trade” that was “necessary” to contractor’s business, and that contractor could claim as exempt under Connecticut law, where truck allowed contractor to accomplish certain tasks related to his

business more quickly and safely than it could by hand. C.G.S.A. § 52-352b(b).—In re Clifford, 222 B.R. 8.—Exemp 45.

Bkrtcy.D.Conn. 1998. Tool of the trade may be “necessary” to debtor’s business, as required for debtor to claim exemption therein under Connecticut law, even though it is not indispensable to debtor’s business. C.G.S.A. § 52-352b(b).—In re Clifford, 222 B.R. 8.—Exemp 45.

Bkrtcy.D.Conn. 1998. Motor vehicle that residential building contractor used to maintain contact with his clients, and to transport workers, tools and materials to jobsites, was “tool of the trade” that was “necessary” to contractor’s business, and that contractor could claim as exempt under Connecticut law. C.G.S.A. § 52-352b(b).—In re Clifford, 222 B.R. 8.—Exemp 45.

Bkrtcy.D.Conn. 1998. Crawler loader that residential building contractor used in his business in order to perform excavation and similar tasks qualified as “tool of the trade” that was “necessary” to contractor’s business, and that contractor could claim as exempt under Connecticut law, where this equipment enabled contractor to perform tasks more efficiently than if he performed the same tasks by hand and enabled contractor to remain competitive in his business. C.G.S.A. § 52-352b(b).—In re Clifford, 222 B.R. 8.—Exemp 45.

Bkrtcy.D.Conn. 1998. Under Connecticut law, fax machine that residential building contractor used to remain competitive with his bidding and to keep in touch with clients qualified as “tool of the trade” that was “necessary” to contractor’s business, and that contractor could claim as exempt under Connecticut law. C.G.S.A. § 52-352b(b).—In re Clifford, 222 B.R. 8.—Exemp 45.

Bkrtcy.S.D.Ga. 1993. Professional services which are performed for benefit of debtor to the exclusion of estate are generally not considered “necessary,” and are not compensable from bankruptcy estate. Bankr.Code, 11 U.S.C.A. § 330(a)(1).—Matter of Coastal Nursing Center, Inc., 162 B.R. 918.—Bankr 3184.

Bkrtcy.D.Idaho 1994. Services performed by counsel for official unsecured creditors’ committee are “necessary,” within meaning of bankruptcy statutes authorizing counsel to be compensated for services which are actual, necessary and reasonable, if they are in furtherance of committee’s statutory duties. Bankr.Code, 11 U.S.C.A. §§ 330(a), 331, 1103(c).—In re Gulf USA Corp., 171 B.R. 379.—Bankr 3182.

Bkrtcy.C.D.Ill. 1993. Although Chapter 13 debtors already had confirmed reorganization plan providing for payout of 100% in five years, proposed amendment, under which debtors would first pay their entire income tax obligation before making any payments of employee withholding taxes arising from partnership business, for which one debtor’s former partner was also making payments, was “necessary” to success of reorganization plan; there was little margin for error under present plan

as debtors were paying a substantial sum for five years, if emergency arose, debtors would not have luxury of missing payment or extending plan because they were already at limit, and allowing amendment would decrease amount paid and shorten time period, enhancing feasibility of plan.—In re Klaska, 152 B.R. 248.—Bankr 3713.

Bkrtcy.N.D.Ill. 2001. Expense for which attorney seeks reimbursement from the bankruptcy estate is “necessary” if it was incurred because it was required to accomplish the proper representation of the client. Bankr.Code, 11 U.S.C.A. § 330.—In re Palladino, 267 B.R. 825.—Bankr 3187(1).

Bkrtcy.N.D.Ill. 2000. Alternative ground on which decision is based should be regarded as “necessary,” for purpose of determining whether party is precluded by principles of res judicata or collateral estoppel from relitigating, in subsequent lawsuit, any of those alternative grounds.—In re Krumhorn, 249 B.R. 295, affirmed 2001 WL 1155258.—Judgm 724.

Bkrtcy.N.D.Ill. 2000. Chapter 13 debtor’s annualized expenditures on luxury items, such as music lessons at \$3,720.00 per year, recreation at \$8,628.00, manicures at \$720.00, hairdresser at \$2,220.00, and housekeeping at \$1,680.00, were neither “reasonable” nor “necessary,” and prevented debtor’s proposed plan from satisfying “disposable income” requirement, given the small estimated dividend of approximately 10% to general unsecured creditors. Bankr.Code, 11 U.S.C.A. § 1325(b).—In re McNichols, 249 B.R. 160.—Bankr 3705.

Bkrtcy.N.D.Ill. 1998. Professional services are “necessary,” within meaning of bankruptcy statute authorizing professional to be compensated only for actual and necessary services, if they are of aid to professional’s client in fulfilling its duties under the Code. Bankr.Code, 11 U.S.C.A. § 330(a).—In re Ben Franklin Retail Store, Inc., 227 B.R. 268.—Bankr 3159, 3182.

Bkrtcy.N.D.Ill. 1996. In determining proper compensation for attorney who performed services for the bankruptcy estate, court will not assume that any expense is necessary; instead, expense is “necessary” if it was incurred because it was required to accomplish the proper representation of the client.—In re Spanjer Bros., Inc., 203 B.R. 85.—Bankr 3182.

Bkrtcy.N.D.Ill. 1990. Expenses incurred by debtor’s counsel are “necessary,” and thus compensable from bankruptcy estate, if they were incurred because they were required to accomplish proper representation of clients. Bankr.Code, 11 U.S.C.A. § 330.—In re Grabill Corp., 110 B.R. 356.—Bankr 3182.

Bkrtcy.N.D.Ill. 1989. Expense is “necessary,” and reimbursable from estate, only if it is reasonably needed to accomplish proper representation of client. Bankr.Code, 11 U.S.C.A. § 331.—In re Convent Guardian Corp., 103 B.R. 937.—Bankr 3187(1).

Bkrcty.N.D.Ind. 2001. To determine whether a particular finding was "necessary" to the prior court's decision, for collateral estoppel purposes, one must ask whether that decision would have been any different without that finding.—In re Busick, 264 B.R. 518.—Judgm 725(1).

Bkrcty.N.D.Iowa 1991. Requirement for rejection of collective bargaining agreement that debtor in possession make proposal providing for "necessary" modifications is satisfied only if debtor proposes modifications to existing labor contract without which debtor cannot obtain confirmation. Bankr.Code, 11 U.S.C.A. § 1113(b)(1)(A).—In re Pierce Terminal Warehouse, Inc., 133 B.R. 639.—Bankr 3113.

Bkrcty.D.Kan. 1995. Expenses of approximately \$38,000 associated with Chapter 12 debtors' maintenance of a second residence and commutes between their two residences were "necessary" and "reasonable," and had to be excluded in determining the "disposable income" which had to be paid into plan, where such expenditures allowed debtors to earn \$75,000 in additional income by working away from farm during weekdays, and requiring debtors to make daily commutes would have resulted in additional transportation expenses and might have necessitated purchase of new or newer automobile.—In re Meyer, 186 B.R. 267.—Bankr 3682.

Bkrcty.D.Kan. 1995. Expense incurred by Chapter 12 debtors in keeping hog farming facility operational in hopes of attracting a purchaser were "necessary" and "reasonable," and had to be excluded for purposes of determining debtors' "disposable income," though debtors' expenses over two-year period in maintaining facility exceeded income which facility generated by roughly \$500.—In re Meyer, 186 B.R. 267.—Bankr 3682.

Bkrcty.D.Kan. 1995. Wage of \$6.50 per hour that Chapter 12 debtors paid to their unemancipated children for performing 8 to 15 hours of work per week on debtors' farm was not "necessary" or "reasonable," and represented failure by debtors to devote all of their "disposable income" to payments under plan, where children were members of debtors' household, who were being supported by debtors and who had some responsibility to perform household and farm labor; in light of children's unemancipated condition, "reasonable" and "necessary" rate was rate of \$4.25 per hour, and excess had to be paid into Chapter 12 plan for distribution to creditors.—In re Meyer, 186 B.R. 267.—Bankr 3682.

Bkrcty.E.D.Ky. 1992. Standard for determining whether modification of collective bargaining agreement is "necessary" for reorganization is whether rejection would increase likelihood of successful reorganization, rather than whether rejection is necessary to prevent liquidation. Bankr.Code, 11 U.S.C.A. § 1113.—In re Sun Glo Coal Co., Inc., 144 B.R. 58.—Bankr 3113.

Bkrcty.W.D.Ky. 1998. Expenses associated with trustee's disposition of automobiles that secured creditor's claim had to be regarded as "necessary," for surcharge purposes, where trustee anticipated,

at time of sale, that vehicles had potential equity for unsecured creditors. Bankr.Code, 11 U.S.C.A. § 506(c).—In re Crutcher Concrete Const., 218 B.R. 376.—Bankr 2854(4).

Bkrcty.D.Md. 1999. To determine whether leases which Chapter 11 debtor-in-possession assumed prior to conversion of case were a "necessary" cost of preserving estate, as required for landlords' claims for lease rejection damages to be entitled to administrative priority, bankruptcy court had to consider whether leases were beneficial to debtor's estate both before and after conversion. Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Merry-Go-Round Enterprises, 241 B.R. 124.—Bankr 2876, 3594.

Bkrcty.E.D.Mich. 1993. Trustee's attorneys were not entitled to any compensation from bankruptcy estate for commencing adversary proceeding that was voluntarily dismissed with no apparent net benefit to estate; proceeding was not "necessary" within meaning of attorney fee provision. Bankr.Code, 11 U.S.C.A. § 330.—In re Arnold, 162 B.R. 775.—Bankr 3197.

Bkrcty.E.D.Mich. 1987. Debtor's proposed modifications in collective bargaining agreement are "necessary," for purpose of statute providing that debtor may reject existing agreement only if union first refuses such necessary modifications, where union's acceptance of modifications would result in greater probability of success for reorganization than if existing agreement were allowed to continue in force. Bankr.Code, 11 U.S.C.A. § 1113.—Matter of Walway Co., 69 B.R. 967.—Bankr 3113.

Bkrcty.D.Minn. 1998. For attorney to be disqualified under Minnesota law, on theory that it is likely that attorney will be a "necessary" witness, attorney's anticipated testimony must be material to matters in suit, as well as relevant to specific issues for which attorney would be called. 52 M.S.A., Rules of Prof.Conduct, Rule 3.7.—In re Southern Kitchens, Inc., 218 B.R. 471.—Atty & C 22.

Bkrcty.D.Minn. 1998. Under Minnesota law, if subject matter of attorney's testimony can be proven in some other effective way, then attorney is not "necessary" witness, and need not be disqualified on that basis. 52 M.S.A., Rules of Prof.Conduct, Rule 3.7.—In re Southern Kitchens, Inc., 218 B.R. 471.—Atty & C 22.

Bkrcty.D.Mont. 2000. Expense for which applicant seeks reimbursement from the estate is "necessary" if it is incurred because it was reasonably needed to accomplish the proper representation of the client. Bankr.Code, 11 U.S.C.A. § 330.—In re Mahaffey, 247 B.R. 823.—Bankr 3159.

Bkrcty.D.Mont. 1989. Debtor's proposed modifications to collective bargaining agreement, which would have resulted in across-the-board reductions in salary levels of between 10 and 17%, were both "fair and equitable" to affected parties and "necessary" to debtor's reorganization, within meaning of bankruptcy statute providing that union's refusal to modify may be grounds for rejection of collective

bargaining agreement. Bankr.Code, 11 U.S.C.A. § 1113.—In re Big Sky Transp. Co., 104 B.R. 333.—Bankr 3113.

Bkrtcy.D.N.J. 1995. Paraprofessional services are “necessary” and can be reimbursed if bankruptcy estate required services for some specific articulable reason beyond satisfaction of trustee’s normal administration of debtor’s estate; routine trustee functions that could have been performed by trustee at lesser cost to estate may not be compensated as necessary paraprofessional services. Bankr. Code, 11 U.S.C.A. §§ 326(a), 330(a)(1).—Matter of Gribbon, 181 B.R. 179.—Bankr 3165.

Bkrtcy.D.N.J. 1992. Services provided to Chapter 11 debtor-in-possession by persons who had been appointed cogeneral managers of debtor were not “necessary,” and thus their salaries did not merit status as administrative expenses; one manager’s motivation was to advance his personal interest by filing plan and waging campaign to control corporate debtor, other manager’s efforts were consistently geared towards opposing comanager both in internal corporate struggle and in the various competing plans, and assistance given to corporation was no more than that required of them by Bankruptcy Code. Bankr.Code, 11 U.S.C.A. §§ 330, 503(b)(1)(A), 521(3).—In re Sound Radio, Inc., 145 B.R. 193.—Bankr 2871.

Bkrtcy.E.D.N.Y. 1998. Expense is deemed “necessary,” within meaning of bankruptcy statute authorizing professionals to recover, from bankruptcy estate, the actual, necessary costs of their representation, if expense was incurred because it was required in order to accomplish proper representation of client. Bankr.Code, 11 U.S.C.A. § 330(a)(1).—In re American Preferred Prescription, Inc., 218 B.R. 680.—Bankr 3159, 3182.

Bkrtcy.S.D.N.Y. 1992. Proposed modification to collective bargaining agreement may be “necessary,” within meaning of statute permitting debtor to reject collective bargaining agreement if its good-faith requests for necessary modifications are rejected without good cause, even though it includes more than the absolute minimum changes needed to permit debtor’s reorganization to proceed successfully. Bankr.Code, 11 U.S.C.A. § 1113.—In re Maxwell Newspapers, Inc., 146 B.R. 920, reversed 149 B.R. 334, affirmed in part, reversed in part 981 F.2d 85.—Bankr 3113.

Bkrtcy.N.D. Ohio 2000. In context of section of the Bankruptcy Code providing that, after notice and a hearing, there shall be allowed administrative expenses for the actual, necessary costs and expenses of preserving the estate, words “actual” and “necessary” mean that the cost or expense incurred must directly and substantially benefit the estate. Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Citi-Toledo Partners II, 254 B.R. 155.—Bankr 2871.

Bkrtcy.N.D. Ohio 1987. “Necessary,” for purposes of Bankruptcy Code provision requiring that proposed modifications to collective bargaining agreement be necessary to debtor’s reorganization as prerequisite to rejection of the collective bargaining agreement, means something less than es-

sential or bare minimum. Bankr.Code, 11 U.S.C.A. §§ 1101 et seq., 1113(b)(1)(A).—In re Amherst Sparkle Market, Inc., 75 B.R. 847.—Bankr 3113.

Bkrtcy.S.D. Ohio 1993. Chapter 11 debtor’s equity holders’ proposed contribution of \$85,000 was not “necessary” to operation of business, and thus absolute priority rule’s new value exception did not permit confirmation of plan that impaired interests of unsecured creditors but permitted next lower class of equity security holders to retain their interest; cash contribution was only necessary to pay off sellers of debtor’s motel and had nothing to do with operation of business. Bankr.Code, 11 U.S.C.A. § 1129(b).—In re Albrechts Ohio Inns, Inc., 152 B.R. 496.—Bankr 3561.

Bkrtcy.W.D. Okla. 1999. For billed services to be “necessary,” for purposes of determining whether compensation requested by attorney is proper, attorney must show that services for which compensation is claimed were incurred to accomplish the task for which attorney was employed. Bankr. Code, 11 U.S.C.A. § 330.—In re Vista Foods USA, Inc., 234 B.R. 121.—Bankr 3182.

Bkrtcy.W.D. Okla. 1983. Property may be useful or convenient in a Chapter 11 reorganization and still not be “necessary,” for purpose of justifying denial of relief from automatic stay. Bankr.Code, 11 U.S.C.A. §§ 362(a), 1101 et seq.—In re Amarex, Inc., 30 B.R. 763.—Bankr 2429(1).

Bkrtcy.D. Or. 1993. Legal expenses incurred by standing Chapter 13 trustee in seeking court authorization for payment of legal costs incurred by trustee in defending age discrimination suit brought by former employee of trustee’s office were themselves “necessary” and reimbursable; legal fees and costs incurred in seeking court authorization flowed logically and inevitably from operations of trustee’s office and from inappropriate actions of Executive Office for United States Trustees in arbitrarily and capriciously denying reimbursement. 28 U.S.C.A. § 586(e).—In re Myers, 153 B.R. 64.—Bankr 3152.

Bkrtcy.D. Or. 1992. Standing Chapter 13 trustee’s expenses in defending against age discrimination lawsuit brought by former employee were incurred by trustee due to his position as standing Chapter 13 trustee and were “necessary” expense which trustee was entitled to pay as part of expenses of his office where Chapter 13 trustee had prevailed in defending charge. 28 U.S.C.A. § 586(e)(1, 2).—In re Myers, 147 B.R. 221.—Bankr 3152.

Bkrtcy.E.D. Pa. 1996. Even though designation of involuntary payments to trust fund, as opposed to nontrust fund, tax liabilities is permissible in Chapter 11 reorganization, bankruptcy court must make finding that designation is “necessary” to plan’s success, on basis of record presented to it, to allow it.—In re Classic Chemical and Supply Co., Inc., 198 B.R. 112.—Bankr 3570; Int Rev 4832.

Bkrtcy.E.D. Pa. 1996. Chapter 11 debtor was not entitled to designate involuntary payments to trust fund, as opposed to nontrust fund, tax liabilities

under reorganization plan, since evidence was not presented that plan would not succeed without designation, and, therefore, that designation was "necessary."—In re Classic Chemical and Supply Co., Inc., 198 B.R. 112.—Bankr 3570; Int Rev 4832.

Bankrcty.E.D.Pa. 1996. Showing that Chapter 11 reorganization plan would fail if designation of involuntary payments to trust fund, as opposed to nontrust fund, tax liabilities were eliminated from plan is prerequisite to concluding that designation is "necessary" to plan's success.—In re Classic Chemical and Supply Co., Inc., 198 B.R. 112.—Bankr 3570; Int Rev 4832.

Bankrcty.E.D.Pa. 1994. Under Bankruptcy Code, if expenses of professional are ones which applicants would have incurred in any event, such as lunch, ordinary secretarial costs, and ordinary transportation, they are not "necessary" and compensation will be denied. Bankr.Code, 11 U.S.C.A. § 330.—In re Jefsaba, Inc., 172 B.R. 786.—Bankr 3159, 3187(1).

Bankrcty.E.D.Pa. 1990. Mortgagees whose claims debtor had agreed to service prior to its Chapter 7 filing could not recover, as "necessary" expense of preserving debtor's estate, the sums which they had advanced to accountant to assemble debtor's records; advances were made not for benefit of debtor, whose future as growing concern was doomed, but to preserve integrity of mortgagees' individual accounts. Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Leedy Mortg. Co., Inc., 111 B.R. 488.—Bankr 2877.

Bankrcty.E.D.Pa. 1987. Property in which debtor has no equity is "necessary" to effective reorganization whenever property is necessary, either in operation of business or in a plan, to further interests of estate through rehabilitation or liquidation; property is necessary if it will contribute to plan of reorganization, and plan may be a liquidation plan. Bankr.Code, 11 U.S.C.A. §§ 362(d)(2), (d)(2)(B), 1123(b)(4).—In re 6200 Ridge, Inc., 69 B.R. 837.—Bankr 2429(1).

Bankrcty.W.D.Pa. 2002. Proposed modifications to collective bargaining agreement (CBA) are "necessary" for Chapter 11 debtor-employer's reorganization, as required for debtor to reject CBA if union refuses without good cause to accept proposed modifications, only when they are directly related to debtor's financial condition, and essential to debtor's reorganization. Bankr.Code, 11 U.S.C.A. § 1113(b)(1)(A).—In re National Forge Co., 279 B.R. 493.—Bankr 3113.

Bankrcty.W.D.Pa. 2002. Bankruptcy court's focus, when determining whether proposed modifications to collective bargaining agreement (CBA) are "necessary" for Chapter 11 debtor-employer's reorganization so as to permit debtor to reject CBA when labor union fails to accept them, should be upon short-term goal of avoiding liquidation, not upon long-term goal of making debtor "whole" once it emerges from reorganization; proposed modification is not "necessary" where it goes beyond the minimum required to prevent debtor's liquidation.

Bankr.Code, 11 U.S.C.A. § 1113(b)(1)(A).—In re National Forge Co., 279 B.R. 493.—Bankr 3113.

Bankrcty.W.D.Pa. 2002. Proposed modifications to collective bargaining agreement (CBA) were "necessary" to Chapter 11 debtor-employer's reorganization, as required for labor union's refusal to accept these modifications to provide basis for debtor to reject CBA, where they would provide economic benefits needed to achieve level of savings to allow debtor to avoid liquidation and contained snap-back provisions designed to ameliorate wage reductions; while debtor's two-year proposal might have been properly limited to one-year contract, so that employees could more quickly benefit from business improvement, two-year contract could be deemed necessary to show, and in fact accomplish, stable work force and business continuity. Bankr.Code, 11 U.S.C.A. § 1113(b)(1)(A).—In re National Forge Co., 279 B.R. 493.—Bankr 3113.

Bankrcty.W.D.Pa. 1996. Chapter 11 debtor's proposed modifications of collective bargaining agreement are "necessary" to its reorganization, as required for debtor to reject collective bargaining agreement when union refuses without good cause to agree to proposed modifications, only if they are directly related to debtor's financial condition and are essential to its reorganizing. Bankr.Code, 11 U.S.C.A. § 1113.—In re Bowen Enterprises, Inc., 196 B.R. 734.—Bankr 3113.

Bankrcty.W.D.Pa. 1996. Chapter 11 debtor's proposed modifications to its collective bargaining agreement, to reduce and freeze bargaining unit employees' wages for period of five years, did not seek more than was "necessary" for debtor's reorganization, so as to permit debtor to reject collective bargaining agreement when union refused to accede to debtor's demands, though debtor's proposal contained no "snap-back" provision for restoring employees' wages and benefits if debtor's reorganization went better than anticipated; absence of such a "snap-back" provision in debtor's proposal was not critical to debtor's ability to later reject collective bargaining agreement, particularly where union never proposed such a "snap-back" provision during its negotiations with debtor. Bankr.Code, 11 U.S.C.A. § 1113.—In re Bowen Enterprises, Inc., 196 B.R. 734.—Bankr 3113.

Bankrcty.W.D.Pa. 1992. Expenditure must benefit the estate as a whole in order to qualify for "administrative expense" status as "actual" and "necessary" cost and expense of preserving estate. Bankr. Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Appliance Store, Inc., 148 B.R. 234.—Bankr 2871.

Bankrcty.W.D.Pa. 1992. In order for expenditure to qualify as "actual" and "necessary" so as to be entitled to administrative priority status, it must benefit estate as whole, not just creditor/claimant. Bankr.Code, 11 U.S.C.A. § 503(b).—In re Conroy, 144 B.R. 966, affirmed in part, reversed in part 153 B.R. 686, affirmed Com. of Pa., Dept. of Environmental Resources v. Conroy, 24 F.3d 568.—Bankr 2871.

Bkrcty.D.Puerto Rico 1987. Chapter 7 trustee's "necessary" expenses, for which compensation may be granted, are those that were incurred by trustee to fulfill requirements of office to expeditiously liquidate estate, account for his activities as trustee, and comply with reporting requirements. Bankr. Code, 11 U.S.C.A. § 330(a)(2); Rules Bankr.Proc. Rule 2016(a), 11 U.S.C.A.—Matter of Perez Hernandez, 73 B.R. 329.—Bankr 3152.

Bkrcty.E.D.Tenn. 1991. Proposed modifications to collective bargaining agreement between debtor coal mining company and union, under which limitations inhibiting debtor's ability to purchase coal from contract miners would be eliminated, were "necessary" to permit debtor's reorganization, for purpose of determining whether debtor could reject agreement; debtor was unable to obtain workers' compensation insurance coverage, contract miners had higher productivity, disparity existed in costs attributable to purchasing coal from contract miners versus debtor's excessive production costs, and profitability of purchasing coal from contract miners had been established. Bankr.Code, 11 U.S.C.A. § 1113.—In re Blue Diamond Coal Co., 131 B.R. 633.—Bankr 3113.

Bkrcty.M.D.Tenn. 1993. To be "actual" and "necessary" expense of preserving estate so as to be entitled to "administrative expense" priority, expense must directly and substantially benefit estate; services that indirectly, incidentally, or tangentially benefit estate do not qualify for administrative expense priority. Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Williams, 165 B.R. 840.—Bankr 2871.

Bkrcty.M.D.Tenn. 1984. Concept of "necessary" for purpose of precluding relief from automatic stay to foreclose lien on principal residence of a Chapter 11 nonbusiness debtor does not require finding of income production where the element of an effective reorganization is the debtors' living quarters and a debtor's home is "necessary" to effective reorganization only if the property is not fungible with other living arrangements meeting the debtor's minimum living requirements, i.e., essential or indispensable. Bankr.Code, 11 U.S.C.A. § 362(d)(2)(B).—In re Gregory, 39 B.R. 405.—Bankr 2429(3).

Bkrcty.E.D.Tex. 2000. Cost or expense cannot be characterized as "necessary," within meaning of administrative expense provision, unless it is reasonable as compared to benefit realized by estate. Bankr.Code, 11 U.S.C.A. § 503(b).—In re Canton Jubilee, Inc., 253 B.R. 770.—Bankr 2871.

Bkrcty.E.D.Tex. 1998. To establish that the expenses involved were both "actual" and "necessary," administrative expense claimant had to demonstrate that charge was a reasonable one for the value or benefit that was bestowed upon bankruptcy estate. Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Express One Intern., Inc., 217 B.R. 207.—Bankr 2871, 2926.

Bkrcty.E.D.Tex. 1998. Unreasonable expenses, while they might be "actual" are never "necessary," and thus do not qualify as "administrative ex-

penses." Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Express One Intern., Inc., 217 B.R. 207.—Bankr 2871.

Bkrcty.N.D.Tex. 1995. If ruling is based on multiple or alternative findings, findings are not "necessary" to judgment and do not have any collateral estoppel effect.—In re Legal Econometrics, Inc., 191 B.R. 331, affirmed in part, vacated in part Vaughn v. Akin, 1997 WL 560617, appeal after remand 1999 WL 304564.—Judgm 725(1).

Bkrcty.N.D.Tex. 1988. In determining whether jewelry is "reasonably necessary" so as to be exempt as "clothing" within meaning of Texas Property Code, court should ask whether objective reasonable person would find jewelry necessary to debtor or his family; in making such determination, definition of "necessary" should not be limited to that which is indispensable, but should include things which are usual and appropriate for reasonable comfort and convenience of debtor, and may consider whether item has sentimental value or serves worthy purpose such as keeping time. V.T.C.A., Property Code § 42.002(3)(C).—In re Reed, 89 B.R. 603.—Exemp 40.

Bkrcty.W.D.Tex. 1992. If debtor's counsel is performing tasks above and beyond those associated with debtor's duties in Chapter 7 case, services are not "necessary" to administration of estate, within meaning of Bankruptcy Code, and should therefore not be compensable. Bankr.Code, 11 U.S.C.A. §§ 330, 521; Fed.Rules Bankr.Proc.Rule 4002, 11 U.S.C.A.—In re Office Products of America, Inc., 136 B.R. 964.—Bankr 3182.

Bkrcty.E.D.Va. 2002. Expense is "necessary," within meaning of bankruptcy provision allowing professional to be reimbursed for his actual, necessary expenses, if it is required to accomplish task for which professional was employed. Bankr.Code, 11 U.S.C.A. § 330(a)(1)(B).—In re Computer Learning Centers, Inc., 285 B.R. 191.—Bankr 3159, 3187(1).

Bkrcty.E.D.Va. 2002. Legal fees which Chapter 7 trustee's accountants incurred, after they had already performed the accounting services for which they were hired, did not relate to completion of professional services, and could not be characterized as "necessary" expenses, within meaning of bankruptcy statute which allows bankruptcy professional to be reimbursed for his actual and necessary expenses. Bankr.Code, 11 U.S.C.A. § 330(a)(1)(B).—In re Computer Learning Centers, Inc., 285 B.R. 191.—Bankr 3161.

Bkrcty.E.D.Va. 1996. In analyzing whether debtor's automobile is "necessary," under Virginia tools of the trade exemption, following inquiries must be answered: whether vehicle is needed to further debtor's employment, i.e., is it vital to performance of debtor's duties in his occupation; whether automobile is necessary because there is no alternative available to debtor in effective pursuit of his employment; whether automobile's use in debtor's occupation is standard requirement in professional and geographical area for nondebtors similarly employed; whether debtor's car is used pri-

marily for purpose of commuting to and from his place of employment; whether debtor exempted vehicle under tools of trade exemption for his own use; and whether fair market value of vehicle is no more than \$10,000. Va.Code 1950, § 34-26(7).—In re Lyall, 193 B.R. 767.—Exemp 45.

Bkrtcy.E.D.Va. 1996. Inquiry of whether debtor's vehicle is "necessary" so as to be tool of his trade under Virginia exemption statute is whether debtor would be unable to effectively compete in his occupation in his geographical area without use of automobile and whether without it debtor's earning power would be hampered. Va.Code 1950, § 34-26(7).—In re Lyall, 193 B.R. 767.—Exemp 45.

Bkrtcy.E.D.Va. 1996. Chapter 7 debtor's automobile was "necessary" in order for him to efficiently and competently perform functions of his occupation as architect, as required for application of Virginia tools of the trade exemption, where practice of architecture was very competitive and debtor would not be able to fairly compete in area as architect without automobile, there was no evidence that debtor had alternative means of transportation, debtor essentially maintained car as necessity of his profession, and market value of car was under \$10,000. Va.Code 1950, § 34-26(7).—In re Lyall, 193 B.R. 767.—Exemp 45.

Bkrtcy.E.D.Va. 1994. Mortgaged real property in which Chapter 11 debtor had no equity was not "necessary" to effective reorganization, and thus, mortgagee was entitled to relief from automatic stay; Chapter 11 plan proposed to have real property, which was debtor's sole asset, evaluated by court and to have partners in debtor, individually, pay deficiency as obligated under their personal agreements, but deficiency would be enormous. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Lake Ridge Associates, 163 B.R. 284, affirmed 169 B.R. 576.—Bankr 2429(3).

Bkrtcy.N.D.W.Va. 1995. In order for services provided by debtor's attorney to be considered "necessary," task performed by counsel must facilitate successful representation of debtor or the estate. Bankr.Code, 11 U.S.C.A. § 330(a).—In re Breeden, 180 B.R. 802.—Bankr 3182.

Fed.Cl. 1998. An item is "necessary" within meaning of the Internal Revenue Code allowing deduction for ordinary and necessary business expenditures if appropriate and helpful in the development and maintenance of a taxpayer's business; the item does not have to be "necessary" in the sense that without the expense the business could not survive; rather, the test is whether a hard-headed businessman, under the circumstances, would have incurred the expense. 26 U.S.C.A. § 162(a).—Seminole Thriftway, Inc. v. U.S., 42 Fed.Cl. 584.—Int Rev 3318.

Ala. 1978. Word "necessary" as used in constitutional and statutory language can mean something less than absolutely indispensable and may mean convenient, useful, proper, needful or relevant to attainment of an objective.—Opinion of the Clerk, Supreme Court, 361 So.2d 361.—Statut 199.

Ala. 1889. "Necessary," when used with reference to the liability of a portion of the right of way of a railway company to condemnation for the use of another railway company when necessary, does not mean an absolute or indispensable necessity, but reasonably requisite and proper for the accomplishment of the end in view under the particular circumstances of the case. It would be difficult to lay down any specific rule, as to the measure of the necessity, of sufficient scope to include all cases.—Mobile & G.R. Co. v. Alabama Midland Ry. Co., 6 So. 404, 87 Ala. 501.

Ala.App. 1936. Medical care is "necessary" which father must furnish his infant child.—Osborn v. Weatherford, 170 So. 95, 27 Ala.App. 258.—Child S 113.

Alaska 1981. Under rule allowing condemnees to recover costs and attorney fees in eminent domain proceeding where allowance of such costs appears "necessary" to achieve just and equitable compensation, costs are "necessary" and therefore compensable only to extent that they are reasonable. Rules of Civil Procedure, Rule 72(k).—Badger Const. Co., Inc. v. State, 628 P.2d 921.—Em Dom 265(3).

Ariz. 1939. Generally, an automobile is not a "necessary" so as to render infant who purchases automobile liable for reasonable price therefor. Rev.Code 1928, §§ 2806, 3040, subd. 4, A.R.S. §§ 1-211 et seq., 14-101, 44-202.—Worman Motor Co. v. Hill, 94 P.2d 865, 54 Ariz. 227, 124 A.L.R. 1363.—Infants 50.

Ariz. 1939. Infant who purchased automobile was not liable for the reasonable price of the automobile on ground that automobile was a "necessary" where the evidence did not show for what purpose the infant used the automobile. Rev.Code 1928, §§ 2806, 3040, subd. 4, A.R.S. §§ 1-211 et seq., 14-101, 44-202.—Worman Motor Co. v. Hill, 94 P.2d 865, 54 Ariz. 227, 124 A.L.R. 1363.—Infants 100.

Ark. 1963. "Necessary" within statute permitting declaration of mistrial if necessary for proper administration of justice in case wherein issue of insanity is raised after trial has begun means overruling necessity. Ark.Stats. § 43-1301.—Cody v. State, 371 S.W.2d 143, 237 Ark. 15.—Crim Law 867.

Ark. 1935. Word "necessary" means convenient, useful, appropriate, suitable, proper, or conducive to end sought, and does not mean absolutely essential.—Parker v. Pace & Davis, 82 S.W.2d 259, 190 Ark. 950.

Ark. 1927. Circuit clerk of Madison county held authorized to purchase typewriter by Crawford & Moses' Dig. § 1371, permitting him to provide "things necessary for his office," since "necessary" means convenient, useful, or appropriate, and not essential, and sections 1976 and 2283, prohibiting contract for county without appropriation, is inapplicable to Madison county, in view of Acts 1919, p. 144.—Madison County v. Simpson, 293 S.W. 34, 173 Ark. 755.

Ark. 1909. The term "necessary," used to describe the easement which may be established by an implied reservation where there has been a unity of possession and a subsequent sale of a portion of the land over which the easement is claimed, means there can be no other reasonable mode of enjoying the dominant tenement without the easement; there should be an element of absolute necessity.—*Cherry v. Brizzolara*, 116 S.W. 668, 89 Ark. 309, 21 L.R.A.N.S. 508.

Ark.App. 1989. To establish easement by implied reservation, easement must be "necessary," meaning that there can be no other reasonable mode of enjoying the dominant tenement without the easement; there must be an element of absolute necessity.—*Carver v. Jones*, 773 S.W.2d 842, 28 Ark.App. 288.—Ease 17(5).

Cal. 1947. Lodging is included as a "necessary," and if shelter or lodging be furnished an infant under such circumstances that promise to pay therefor is implied, he will be liable for reasonable value unless statutory prohibitions apply. West's Ann.Civ.Code, § 36.—*Burnand v. Irigoyen*, 186 P.2d 417, 30 Cal.2d 861.—Infants 50.

Cal.App. 1 Dist. 1985. Illegal conduct designed to influence public policies cannot be considered "necessary" for purposes of necessity defense where lawful avenues are available.—*In re Weller*, 210 Cal.Rptr. 130, 164 Cal.App.3d 44.—Crim Law 38.

Cal.App. 1 Dist. 1980. Term "necessary" as used in statute which provides that civil rights of state prisoners include the right to have personal visits subject to the power of the Department of Corrections to provide such restrictions as are "necessary for the reasonable security of the institution" is to be construed according to its ordinary meaning; therefore, a restriction on the right of personal visits is not "necessary" if the goal which it is intended to promote can effectively be promoted by less restrictive means. West's Ann.Pen.Code, §§ 2601, 2601(d).—*In re Bell*, 168 Cal.Rptr. 100, 110 Cal.App.3d 818.—Prisons 4(6).

Cal.App. 1 Dist. 1966. Municipalities are authorized to prescribe regulations for business and commercial vehicles on city streets in furtherance of orderly conduct of traffic, safety of residents, protection and preservation of streets, and general welfare of community, but such vehicles while subject to restriction may be used for their proper functions where they are necessarily in such use; use of vehicle is not "necessary" if it is merely more convenient, suitable or comfortable or if it merely makes given task less difficult or onerous. West's Ann.Vehicle Code, §§ 35701, 35703, 35704.—*Ratkovich v. City of San Bruno*, 54 Cal.Rptr. 333, 245 Cal.App.2d 870.—Autos 5(1).

Cal.App. 1 Dist. 1951. Term "necessary" in statute providing for allowance of alimony and costs, must be given its broadest connotation and what is necessary rests in sound discretion of trial judge. Civ.Code, § 137.—*Larsen v. Larsen*, 226 P.2d 650, 101 Cal.App.2d 862.—Hus & W 298(1), 301.

Cal.App. 1 Dist. 1942. Statute authorizing court to require husband pending divorce action to pay any money "necessary" to enable wife to support herself and children and prosecute or defend the action uses the quoted word in the broadest sense, and what is necessary rests in the sound discretion of the trial court. West's Ann.Civ.Code, § 137.—*Howton v. Howton*, 124 P.2d 837, 51 Cal.App.2d 323.—Child S 56; Divorce 215, 223.

Cal.App. 1 Dist. 1938. Where distribution of testator's property under will was the same that would have resulted if there had been no will, because of conveyances made by testator to principal devisee and heirship of other devisees, defense of will contest was not "necessary" within terms of statute governing authority of executrix, and hence denial of allowance to executrix and her attorneys for services rendered in defending the contest was not an abuse of discretion. Prob.Code, § 902.—*In re Silva's Estate*, 84 P.2d 59, 29 Cal.App.2d 52.—Ex & Ad 111(3).

Cal.App. 1 Dist. 1932. In statute authorizing court to grant wife alimony necessary for support during pending divorce action, term "necessary" vests power to grant such alimony in court's discretion. West's Ann.Civ.Code, § 137.—*Westphal v. Westphal*, 10 P.2d 119, 122 Cal.App. 379.—Divorce 211.

Cal.App. 2 Dist. 1969. Under statute exempting from execution necessary household furniture, word "necessary" does not mean "indispensable." West's Ann.Code Civ.Proc. § 690.2.—*Independence Bank v. Heller*, 79 Cal.Rptr. 868, 275 Cal.App.2d 84.—Exemp 42.

Cal.App. 2 Dist. 1956. The word "necessary" in caption and body of statute declaring sheriff's deputies and employees, on whose negligence, wrongful act or other default action against sheriff is based, necessary parties defendant does not mean "indispensable". West's Ann.Gov.Code, § 26685.—*Reynolds v. Lerman*, 292 P.2d 559, 138 Cal.App.2d 586.—Sheriffs 134.

Cal.App. 3 Dist. 1931. Where both husband and wife had agreed to pay rent, wife's separate property could be subjected to payment thereof as "necessary" furnished family while living with husband. Civ.Code, §§ 158, 171.—*Lane v. McAlpine*, 2 P.2d 184, 115 Cal.App. 607.—Hus & W 151(6).

Cal.App. 4 Dist. 1996. Refusal of Department of Corrections to allow appellate defense counsel to have personal contact visit with inmate unless counsel removed his prosthetic leg and subjected it to inspection and possible disassembly by prison guards was not "necessary" to protect reasonable security interests of prison within meaning of statute authorizing restrictions on personal visits and had impermissible chilling effect on rights to attorney visitation, absent any particularized suspicion that counsel was attempting to smuggle contraband; counsel had expressed willingness to remove his pants and submitted to two-hour search and examination of attached leg, objecting only to removal and disassembly of his \$21,000 precision instrument. West's Ann.Cal.Penal Code §§ 2600,

2601(d).—In re Roark, 56 Cal.Rptr.2d 582, 48 Cal. App.4th 1946.—Prisons 4(12).

Cal.App. 4 Dist. 1942. An instruction that person parking on highway *prima facie* violates the law, and that he must show that it was necessary to park, was not error, the word "necessary" being used as synonym for "practicable". West's Ann.Vehicle Code, § 22504.—Hunton v. California Portland Cement Co., 123 P.2d 947, 50 Cal.App.2d 684.—Autos 246(13).

Colo. 1978. Provision of comprehensive city sign code which prohibited off-premise signs unless "necessary to promote the interests of the use to which it relates" set forth sufficient standards to withstand constitutional challenge and was not void for vagueness; "necessary" implied that the erection of a sign was essential and indispensable to the use to which the sign related and required that the sign code administrator make a good-faith determination to ascertain whether failure to permit a sign would effectively prohibit communication or expression of a message. U.S.C.A.Const. Amend. 1.—Veterans of Foreign Wars, Post 4264 v. City of Steamboat Springs, 575 P.2d 835, 195 Colo. 44, appeal dismissed 99 S.Ct. 66, 439 U.S. 809, 58 L.Ed.2d 101.—Zoning 28.

Colo. 1934. Law encourages determination of all controversies in one action when possible by bringing in either necessary or proper parties and disapproves of bringing in parties neither necessary nor proper; "necessary" meaning indispensable.—Haldane v. Potter, 31 P.2d 709, 94 Colo. 558.—Parties 29.

Conn. 1990. Party is "necessary" if its presence is absolutely required in order to assure a fair and equitable trial. Practice Book 1978, § 152(3).—Biro v. Hill, 570 A.2d 182, 214 Conn. 1, on remand 1990 WL 265142.—Parties 18, 29.

Conn. 1989. Term "necessary" within meaning of statute authorizing municipality to grant authority to board or commission to promulgate regulations as necessary to protect wetlands and water courses within its territorial limits does not mean indispensable, but rather, means that which is reasonably designed to effectuate the stated purposes of the wetlands statutes. C.G.S.A. §§ 22a-36, 22a-42(c).—Cioffoletti v. Planning and Zoning Com'n of Town of Ridgefield, 552 A.2d 796, 209 Conn. 544, appeal after remand 599 A.2d 9, 220 Conn. 362.—Environ Law 130, 135.

Conn. 1951. The word "necessary" as used in statute providing that any school district may take land which has been fixed upon as a site, or addition to a site, of a public school house, and which is "necessary" for such purpose, does not mean an absolute or indispensable necessity, but only that the taking provided for is reasonably necessary. Gen.St.1949, § 7175.—Town of West Hartford v. Talcott, 82 A.2d 351, 138 Conn. 82.—Em Dom 56.

Conn. 1951. Where, though it was not absolutely essential, it was highly desirable to have a full-sized baseball field and softball field for use in connection with school, and to accomplish that a

certain tract of land was needed, the taking of such tract was "necessary" within meaning of statute providing that any school district may take land which has been fixed on as a site, or addition to a site, of a public school house, and which is "necessary" for such purpose. Gen.St.1949, §§ 7175, 7176, 7181.—Town of West Hartford v. Talcott, 82 A.2d 351, 138 Conn. 82.—Em Dom 56.

Conn. 1946. "Needful," when used in a statute and as distinguished from "necessary," "requisite" and like words, carries the weakest suggestion of urgency but it applies to that which is required to supply a want or fill a need.—A. W. Carlson, Inc. v. Judd, 48 A.2d 269, 133 Conn. 74.—Statut 199.

Conn. 1923. Under Gen.St.1918, § 5275 (C.G.S.A. § 46-12), providing that both husband and wife "shall be liable for the reasonable and necessary services of a physician rendered the husband, wife or their minor child," the words "reasonable" and "necessary" have no technical or legal signification differing from their content and sense under the common-law rule that a husband is liable for reasonable and necessary services furnished by physician to wife.—Ematrudo v. Gordon, 123 A. 14, 100 Conn. 163.—Hus & W 19(15), 151(7).

Conn. 1917. In will devising life estate during widowhood, with right to use "in addition to the income, so much of the principal as may be necessary" for support of widow and children, "necessary" means all reasonable necessities suitable to situation and station in life of the widow, with special reference to fact that she was testator's widow.—Hooker v. Goodwin, 99 A. 1059, 91 Conn. 463, Am. Ann. Cas. 1918D, 1159.—Wills 692(2).

Conn. 1912. "Necessary," in legislative acts, according the right of eminent domain, does not mean an absolute or indispensable necessity, and only that the taking provided for is reasonably necessary.—In re New Haven Water Co., 85 A. 636, 86 Conn. 361.—Em Dom 56.

Conn. 1912. A water company's application in condemnation proceedings was not demurrable because it alleged in the terms of its charter the taking of the water to be both "necessary and expedient," though Gen.St.1902, § 2600, as amended by Pub. Acts 1903, c. 192 (Rev. 1949, § 4028), modifies its charter so as to authorize such taking as is "necessary" only.—In re New Haven Water Co., 85 A. 636, 86 Conn. 361.—Em Dom 191(3).

Conn. 1891. "Necessary," as used in reference to the right of a person to kill a dog to prevent the destruction of or damage to his property, if he has reasonable ground to believe that such killing is necessary to prevent such destruction or damage, does not mean absolutely necessary. It means relatively so, when it is considered that the animal in question is a dog, and when it is considered what his past acts have been, what his future acts will probably be, what the threatened injury from him at the time of his killing is, and what the available means of efficient protection to the defendant at the time are.—Simmonds v. Holmes, 23 A. 702, 61 Conn. 1, 15 L.R.A. 253.

Del.Super. 1958. Notwithstanding chancery court rule, requiring complaint in stockholder's derivative suit to set forth efforts made to secure from managing directors or trustees and, if "necessary," from shareholders as such action as complainant desires, a cause of action for fraud allegedly committed by directors may be maintained by minority stockholder without demand upon stockholders collectively. Court of Chancery Rules, rule 23(b), Del.C. Ann.—Mayer v. Adams, 141 A.2d 458, 37 Del.Ch. 298.—Corp 320(5).

Del.Super. 1941. The act providing for establishment of a department of elections for New Castle county and charging department with duty to divide representative districts in county into as many election districts as "they may deem necessary," and to divide such districts only as shall be found to contain a greater number of voters than can be "conveniently" voted therein, is not unconstitutional as an unlawful "delegation of legislative power," since the word "necessary" means indispensable, requisite, or essential, and the word "conveniently" means without trouble or difficulty. Rev.Code 1935, § 1750, as amended by 42 Del.Laws, c. 115, § 5; Const. art. 2, § 1.—State ex rel. Morford v. Tatnall, 21 A.2d 185, 41 Del. 273, 2 Terry 273.—Const Law 62(5.1); Elections 47.

Del.Super. 1941. The word "necessary" in a statute is susceptible of various meanings and must be construed in connection with what it is used, and as an adjective it is defined as meaning indispensable, requisite or essential.—State ex rel. Morford v. Tatnall, 21 A.2d 185, 41 Del. 273, 2 Terry 273.—Statut 199.

Del.Super. 1954. Where State Highway Department had no present plans, at time of condemnation proceeding, for utilizing certain land, but Department had mere contemplation of need for improvement of highway at some time within next thirty years, condemnation was not "necessary" so as to be permitted under statute authorizing condemnation by Department of such land as would be necessary for improvement of highways. 17 Del.C. § 132(c) (4).—State ex rel. Sharp v. 0.62033 Acres of Land in Christiana Hundred, New Castle County, 110 A.2d 1, 49 Del. 90, 10 Terry 90, affirmed 112 A.2d 857, 49 Del. 174, 10 Terry 174.—Em Dom 58.

Del.Super. 1953. The key word of statute providing that court may order husband to pay wife such sums as may be deemed "necessary" to defray expenses in conducting divorce case, is the word "necessary", and court is empowered to compel husband to pay only such sums as may be "necessary" to enable wife to prosecute or defend divorce suit. Rev.Code 1935, § 3508.—Hopkins v. Hopkins, 94 A.2d 222, 47 Del. 515, 8 Terry 515.—Divorce 221.

Del.Super. 1953. If expenses of divorce suit have been paid by wife, such expenses are not "necessary" within statute providing that court may order husband to pay wife such sum as may be deemed "necessary" to defray expenses in conducting divorce case. Rev.Code 1935, § 3508.—Hop-

kins v. Hopkins, 94 A.2d 222, 47 Del. 515, 8 Terry 515.—Divorce 225.

Del.Super. 1953. Statute providing that court may order husband to pay wife such sums as may be deemed "necessary" to defray expenses in conducting divorce case, did not authorize court to compel husband during pendency of divorce suit to reimburse wife for detective fees paid by wife. Rev.Code 1935, § 3508.—Hopkins v. Hopkins, 94 A.2d 222, 47 Del. 515, 8 Terry 515.—Divorce 221.

D.C.Mun.App. 1949. Evidence sustained finding that motor scooter was not a "necessary" for infant and that infant had not been emancipated and entitled infant to recover purchase price of motor scooter from seller after it was stolen.—Dawson v. Fox, 64 A.2d 162.—Infants 98.

Fla. 1975. "Necessary," in context that railroad's use of land must be necessary for successful operation of the railroad in order to forestall condemnation under "prior public use doctrine," means utilitarian in furtherance of public use for which public franchise or certificate of public convenience and necessity has been granted, and does not mean "indispensable" to railroad operation.—Florida East Coast Ry. Co. v. City of Miami, 321 So.2d 545.—Em Dom 47(1).

Fla.App. 2 Dist. 1984. "Necessary," as used in statute providing that discharge of the personal representative would not prevent a revocation of the order of discharge if other property of the estate is discovered or it becomes necessary that further administration of the estate be had for any cause, refers to situations in which a mistake has been made in the administration of the estate which necessitates reopening the estate to allow proper and complete administration, i.e., circumstances involving property in the estate having not been distributed, but does not refer to the later discovery of a will. West's F.S.A. § 733.903.—In re Estate of Killinger, 448 So.2d 1187.—Ex & Ad 509(4).

Fla.App. 3 Dist. 1979. As applied to property held by a railroad, doctrine of prior public use would preclude condemnation of its property by municipality if subject property was devoted to public use, i. e., if property is necessary for successful operation of railroad; "necessary" in this context means utilitarian in furtherance of public use for which a public franchise or certificate of public convenience and necessity has been granted and does not mean indispensable to railroad operation, while "successful" means use correlative with railroad's public use as opposed to a financially successful one.—Florida East Coast Ry. Co. v. City of Miami, 372 So.2d 152, appeal dismissed 385 So.2d 756, certiorari denied 385 So.2d 756.—Em Dom 47(1).

Fla.App. 5 Dist. 1986. Under meat delivery contract on account which provided that customer agreed to pay all costs including reasonable attorney fees if legal action were "necessary" for collection on account, seller who filed law action to recover balance due on account and who obtained judgment and order for legal costs and prejudgment interest was also entitled to court reporting costs

and reasonable attorney fees; that seller could have collected balance due by nonlegal efforts did not render the legal action not "necessary" within the contract provision. *West's F.S.A. § 57.071(2)*.—*Golden Cleaver Packing, Inc. v. G & M Hughes Corp.*, 490 So.2d 1381.—Sales 368.

Ga. 1974. Where sugar refinery elected to move railroad car-weighing operation to rear of private home because new location afforded longer stretch of track on which to line up cars before and after weighing, thus making a more efficient and convenient operation, the new location was not "necessary" within doctrine that railroads are immune from liability for nuisance resulting from necessary activity.—*Central of Georgia R. Co. v. Collins*, 209 S.E.2d 1, 232 Ga. 790.—Nuis 25(1).

Ga. 1956. A "necessary" or "indispensable" party is one essential to give court jurisdiction of cause.—*Sowell v. Sowell*, 92 S.E.2d 524, 212 Ga. 351.—Parties 18, 29.

Ga. 1942. A person without any interest in the subject matter of an equity suit and who cannot be affected by the decree rendered therein is neither a "necessary" nor "proper party", but all persons directly interested in the result and who will be affected by the decree are "necessary parties".—*Pope v. U.S. Fidelity & Guaranty Co.*, 20 S.E.2d 13, 193 Ga. 769.—Parties 14, 18, 25, 29.

Ga. 1913. As used in Civ.Code 1910, §§ 2216, 2823, authorizing corporations to acquire such property, do such acts, and exercise such powers as are necessary to carrying out the purposes of their organization, the word "necessary" must be given a reasonable construction, and not be so construed as to unduly obstruct the profitable and reasonable exercise of corporate powers.—*Kohlruess v. Zachery*, 77 S.E. 812, 139 Ga. 625, 46 L.R.A.N.S. 72.—Corp 372.

Ga. 1908. The word "necessary," as used in the rule that a party having the right of condemning private property for public purposes can only condemn such amount thereof as is "necessary," is not meant to be used in the sense of indispensable. Necessity for public use is not such an imperative necessity that would render the contract of a railroad, for instance, impossible without the amount of land in question.—*Piedmont Cotton Mills v. Georgia Ry. & Elec. Co.*, 62 S.E. 52, 131 Ga. 129.

Ga. 1906. The words "necessary" and "indispensable" have sometimes been considered synonymous, and parties in equity have been classified as "necessary parties" and "proper parties".—*Railroad Commission of Georgia v. Palmer Hardware Co.*, 53 S.E. 193, 124 Ga. 633.

Ga.App. 1995. Corporation that Georgia Secretary of State administratively dissolved for failing to file its annual registration could not maintain its previously filed legal malpractice action, as maintenance of such lawsuit was not "necessary" part of winding up its business and affairs. O.C.G.A. § 14-2-1421(c).—*Exclusive Properties, Inc. v. Jones*, 460 S.E.2d 562, 218 Ga.App. 229, reconsid-

eration denied, and certiorari granted, and certiorari vacated.—Corp 617(5).

Ga.App. 1995. Term "necessary," as used in consent form signed by patient, was given its usual and common meaning of being essential, indispensable, or requisite. O.C.G.A. § 13-2-2(2).—*Harris v. Tatum*, 455 S.E.2d 124, 216 Ga.App. 607.—Health 905.

Ga.App. 1990. Agreement waiving claims against ranch arising out of horse riding lessons was voidable as matter of law, where rider was 14 years old and unaccompanied by any parent or guardian, and contract was not for a "necessary." O.C.G.A. § 13-3-20(a, b).—*Smoky, Inc. v. McCray*, 396 S.E.2d 794, 196 Ga.App. 650, certiorari denied.—Infants 47.

Ga.App. 1930. Acceptance of bank stock in settling account by grocery corporation, empowered to do all things "necessary" in operating business, held not ultra vires (Civ.Code 1910, §§ 2216, 2823, subd. 5).—*J.L. Young Co. v. Minchew*, 155 S.E. 356, 42 Ga.App. 228.—Corp 377(3).

Idaho 1997. Whether general provision is "necessary" to define or efficiently administer water rights, so as to warrant inclusion in water right decree pursuant to statute, depends upon specific general provision at issue, and involves question of fact, specifically defining proposed general provision and circumstances of its application, and question of law, specifically determining whether general provision facilitates definition or efficient administration of water rights in decree. I.C. § 42-1412(6).—*A & B Irr. Dist. v. Idaho Conservation League*, 958 P.2d 568, 131 Idaho 411.—Waters 152(11).

Idaho 1997. General provision is "necessary," so as to warrant inclusion in water right decree pursuant to statute, if it is required to define water right being decreed or to efficiently administer water rights in water right decree. I.C. § 42-1412(6).—*A & B Irr. Dist. v. Idaho Conservation League*, 958 P.2d 568, 131 Idaho 411.—Waters 152(11).

Idaho 1920. "Necessary," as used in the phrase "necessary to the operation of a railroad" does not mean inevitable, on the one hand, nor merely convenient or profitable, on the other, but a stage of utility or materiality to the carrier's business less than the first, but greater than the latter, of these expressions. Perhaps the phrase reasonably required in the exercise of sound business prudence would express the idea fairly well.—*Chicago, M. & St. P. Ry. Co. v. Kootenai County*, 192 P. 562, 33 Idaho 234.

Ill. 1992. Sunday closing ordinance, which does not define terms "necessary" and "emergency," is not unconstitutionally vague; "necessary" is interpreted to mean that which is reasonably required, and emergency as an unforeseen combination of circumstances calling for immediate action.—*Opyt's Amoco, Inc. v. Village of South Holland*, 172 Ill. Dec. 390, 595 N.E.2d 1060, 149 Ill.2d 265.—Sunday 2.

Ill. 1976. Where employee of owner of nursing home had led New Jersey authorities to believe that she was responsible for day-to-day operation of Chicago nursing home and that she was employee with whom owner conferred when he was in Chicago, employee's contention that executive director of Chicago nursing home was in superior position to testify as to owner's activities in Chicago for purpose of New Jersey grand jury investigation could not preclude finding that employee was "necessary" for New Jersey grand jury investigation under Uniform Act to secure the attendance of witnesses from within or without a state in criminal proceedings. S.H.A. ch. 38, § 156-2.—*In re Adams*, 1 Ill.Dec. 55, 356 N.E.2d 55, 64 Ill.2d 269.—Gr Jury 36.2.

Ill. 1954. In determining whether a public improvement and steps proposed by municipality to accomplish it are "needed" or "necessary", quoted words are to be construed and applied to mean expedient, reasonably convenient, and useful to the public, and cannot be limited to an absolute physical necessity.—*Baltis v. Village of Westchester*, 121 N.E.2d 495, 3 Ill.2d 388.—Mun Corp 278(1).

Ill. 1952. The word "necessary", as used in statutes such as the Eminent Domain Act, should be construed to mean "expedient", "reasonably convenient", or "useful to the public", and cannot be limited to an absolute physical necessity, and conversely quoted word does not mean "indispensable", or "an absolute necessity". S.H.A. ch. 47, § 12.—*Department of Public Works and Bldgs. v. Lewis*, 103 N.E.2d 595, 411 Ill. 242.—Em Dom 56.

Ill. 1949. The word "necessary", as used in city zoning ordinance providing that zoning board of appeals shall approve any special use of any lot area or building within any use district if the special use is "necessary" at that location for public convenience, means "reasonably convenient" or "expedient".—*Illinois Bell Telephone Co. v. Fox*, 85 N.E.2d 43, 402 Ill. 617.—Zoning 378.1.

Ill. 1949. Where new telephone exchange was needed in residential district in city to meet increasing demand for service, proposed site was at exact wire center of telephone district, and such site was the most practical, convenient, and economical location for the new exchange, erection or exchange on such site was "necessary" within meaning of city zoning ordinance permitting a special use of any lot, area, where special use is "necessary" at that location for public convenience, and it was mandatory for zoning board of appeals to approve application for special use.—*Illinois Bell Telephone Co. v. Fox*, 85 N.E.2d 43, 402 Ill. 617.—Zoning 386.

Ill. 1913. The word "necessary," as used in the rule that a city has those powers that are expressly delegated, and such as are necessarily implied, does not mean indispensable.—*City of Chicago v. Kluever*, 100 N.E. 917, 257 Ill. 317.—Mun Corp 59.

Ill. 1908. The declaration in an action for injuries to an employee in a coal mine while placing a loaded car on a side track alleged that it became "necessary" for the employee in the performance of his duty to place the car on the side track. The

evidence showed that it was convenient, and tended to greatly facilitate the performance of the work to place the car on the side track, which was not more than 200 feet from where it was loaded, instead of taking it from one-fourth to one-half a mile distant. *Held*, that the proof sustained the allegation; the word "necessary" not meaning indispensable, unavoidable, or that which must be, but meaning reasonably convenient.—*Brooks v. Chicago, Wilmington & Vermilion Coal Co.*, 84 N.E. 1028, 234 Ill. 372.—Emp Liab 189.

Ill. 1904. The word "necessary," as used in Rev. St. c. 34, § 26, S.H.A.Ill. ch. 34, § 26, making it the duty of the county board of each county to provide a suitable courthouse when "necessary" and the finances of the county will justify it, "is not to be interpreted as referring to such measures as are absolutely and indispensably necessary, but as including all appropriate means which are conducive or are adapted to the end to be accomplished, and which in the judgment of the board will most advantageously effect it."—*Coles County v. Goehring*, 70 N.E. 610, 209 Ill. 142.

Ill. 1899. Under Rev.St.1874, c. 66, relating to horse and dummy railroads, and the Eminent Domain Act, Smith-Hurd Stats. c. 47, § 1 et seq., allowing the condemnation of property when "necessary" for the construction or operation of such roads, the necessity is not an absolute physical necessity, but one created by expediency or reasonable convenience.—*Aurora & G. Ry. Co. v. Harvey*, 53 N.E. 331, 178 Ill. 477.—Em Dom 56.

Ill.App. 1 Dist. 1983. Term "necessary" as used in zoning ordinance with respect to standards for granting special use permits does not mean "absolutely necessary" but has been construed to mean "expedient" or "reasonably convenient" to public welfare.—*Cosmopolitan Nat. Bank v. Village of Niles*, 73 Ill.Dec. 606, 454 N.E.2d 703, 118 Ill. App.3d 87.—Zoning 378.1.

Ill.App. 1 Dist. 1983. Term "necessary" in provision of zoning ordinance governing special use permits did not mean absolutely necessary but expedient or reasonably convenient to the public welfare.—*Hope Deliverance Center, Inc. v. Zoning Bd. of Appeals of City of Chicago*, 72 Ill.Dec. 377, 452 N.E.2d 630, 116 Ill.App.3d 868.—Zoning 378.1.

Ill.App. 1 Dist. 1976. Word "necessary," within meaning of city zoning ordinance requiring special use applicant to prove that such use is necessary for public convenience at specified location does not mean "absolutely necessary" but, rather, should be construed to mean "expedient" or "reasonably convenient" to public welfare.—*Foster & Kleiser, Division of Metromedia, Inc. v. Zoning Bd. of Appeals of City of Chicago*, 347 N.E.2d 493, 38 Ill.App.3d 50.—Zoning 435.

Ill.App. 1 Dist. 1965. Finding of chancellor that money spent by stepmother for her minor stepson's college education, financed through bank loan although minor had been offered a full tuition scholarship at another university and might have received from college to which he went either a scholarship or a more favorable loan was not a

"necessary" was not manifestly against weight of evidence in stepmother's suit against minor's estate to recover funds expended.—*In re Johnstone's Estate*, 212 N.E.2d 143, 64 Ill.App.2d 447.—Child S 108.

Ill.App. 3 Dist. 1984. "Necessary," within meaning of Environmental Protection Act section providing that county board or governing body shall approve waste disposal site location where facility is necessary to accommodate waste needs of area it is intended to serve, does not mean that landfills must be shown to be absolutely necessary, only that they must be shown to be reasonably required by waste needs of area intended to be served, taking into consideration waste production of area and waste disposal capabilities, along with any other relevant factors. S.H.A. ch. 111½, ¶ 1039.2(a)(i).—*Waste Management of Illinois, Inc. v. Illinois Pollution Control Bd.*, 77 Ill.Dec. 919, 461 N.E.2d 542, 122 Ill.App.3d 639.—*Environ Law* 359.

Ill.App. 3 Dist. 1972. Term "necessary" defines that group of parties regarded as indispensable and who must be joined.—*Clark v. Village of Milan*, 277 N.E.2d 895, 3 Ill.App.3d 569.—Parties 29.

Ill.App. 4 Dist. 1996. "Necessary," as used in statute providing that expenditures for repayment of debts that represent reasonable and necessary expenses for production of income may be deducted from net income in determining child support obligation, describes those expenses outlaid by parent with good-faith belief that his or her income would increase as result, and which actually did act to increase income, or would have done so absent some extenuating circumstance. S.H.A. 750 ILCS 5/505(a)(3)(h).—*Gay on Behalf of Gay v. Dunlap*, 215 Ill.Dec. 691, 664 N.E.2d 88, 279 Ill.App.3d 140, rehearing denied, appeal denied 219 Ill.Dec. 563, 671 N.E.2d 730, 168 Ill.2d 589.—Child S 91.

Ill.App. 4 Dist. 1990. Once defendant in lawful custody has knowingly waived his or her *Miranda* rights and indicated willingness to talk to police, police are under no obligation, under statute requiring person arrested to be taken before judge without "unnecessary delay", to interrupt their interrogation as long as its length is not unreasonable and suspect's statements continue to be voluntary; "delay" involved in taking voluntary statement from suspect under the circumstances is "necessary" within meaning of statute. S.H.A. ch. 38, ¶ 109-1(a). U.S.C.A. Const.Amend. 5.—*People v. Smith*, 148 Ill.Dec. 946, 561 N.E.2d 252, 203 Ill.App.3d 545.—*Crim Law* 412.2(5).

Ill.App. 5 Dist. 1997. Under statute permitting reduction of expenditures for repayment of debts that represent reasonable and necessary expenses for production of income in determining parent's net income for child support purposes, "necessary" was intended to describe those expenses outlaid by parent with good faith belief his or her income would increase as result, and which actually did act to increase income, or would have done so absent some extenuating circumstances. S.H.A. 750 ILCS 5/505(a)(3)(h).—*In re Marriage of Davis*, 223 Ill.

Dec. 166, 679 N.E.2d 110, 287 Ill.App.3d 846.—Child S 91.

Ill.App. 5 Dist. 1990. "Necessary," within meaning of requirement of Pollution Control Act for approval of new pollution control facility that landfill must be "necessary" to accommodate needs of area intended to be served, does not mean absolute necessity, but rather expedient, indicating some urgency, or reasonably convenient. S.H.A. ch. 111½, ¶ 1039.2(a)(i).—*Wabash and Lawrence Counties Taxpayers and Water Drinkers Ass'n v. Pollution Control Bd.*, 144 Ill.Dec. 562, 555 N.E.2d 1081, 198 Ill.App.3d 388.—*Environ. Law* 358.

Ind. 1933. Burns' Ann.St.1926, § 5911, provides that there shall be a regular session of the board of county commissioners, beginning on the first Monday of each calendar month, and continuing only so long as the necessary business of such session absolutely requires. The term "calendar month" means the time from any day of a month to the corresponding day, if any, and if not, to the last day, of the next month. The word "necessary" expresses mere convenience, or reasonable convenience, and frequently no more than that the thing is convenient or useful.—*State ex rel. Minniear v. Eckman*, 187 N.E. 327, 205 Ind. 550.

Ind. 1911. "Necessary," in legislative acts, according the right of eminent domain, does not mean an absolute or indispensable necessity, but only that the taking provided for is reasonably necessary.—*Chicago, I. & L. Ry. Co. v. Baugh*, 94 N.E. 571, 175 Ind. 419.—*Em Dom* 56.

Ind. 1908. The word "necessary," as used in an allegation, in a railroad company's complaint to restrain the enforcement of an order requiring the construction of a connection with another road, that all the land it was required to use for such connection was "necessary" to enable it to handle its traffic, meant nothing more than that the lands would be reasonably convenient.—*Pittsburgh, C., C. & St. L. Ry. Co. v. Hunt*, 86 N.E. 328, 171 Ind. 189.

Ind.App. 1930. Common school education is a "necessary" to which a child is entitled at expense of its parent.—*Morris v. Morris*, 171 N.E. 386, 92 Ind.App. 65.—Child S 116.

Ind.App. 1930. A general college education is not a "necessary" to which a child is entitled at expense of its parent.—*Morris v. Morris*, 171 N.E. 386, 92 Ind.App. 65.—Child S 119.

Ind.App. 1 Div. 1909. Hiring horse by traveling salesman with which to reach another town is such "necessary" and "reasonable" incident to performance of employer's business as to render employer liable for his negligent injury of horse, though town could have been reached by other modes of travel.—*Rexroth v. Holloway*, 90 N.E. 87, 45 Ind. App. 36.—*Princ & A* 159(1).

Iowa 1954. In rule providing for interrogatories when necessary adequately to prepare for trial, "necessary" is analogous to "expedient" or "appropriate" and "adequately" broadens "necessary". 58 I.C.A. Rules of Civil Procedure, rule 121.—*Myers*

v. Stratmann, 65 N.W.2d 356, 245 Iowa 1060.—*Pretrial Proc* 271.

Iowa 1940. In consolidated actions by a minor against an automobile company to cancel a contract for purchase of automobile and to recover payments thereon, and by automobile company against the minor's parents and surety to require payment for the automobile on ground that the automobile was a "necessary," evidence as to when resale of automobile by automobile company after it had been returned by the minor, took place, was properly excluded as irrelevant, but ruling was harmless in any event where minor was not liable.—*Perry Auto Co. v. Mainland*, 294 N.W. 281, 229 Iowa 187.—*App & E* 1056.1(6); *Child S* 191; *Infants* 98; *Princ & S* 160.

Iowa 1940. Ordinarily, an automobile is not regarded as a "necessary" for a minor, so as to render the minor purchasing an automobile liable for the purchase price. Code 1939, § 10493.—*Perry Auto Co. v. Mainland*, 294 N.W. 281, 229 Iowa 187.—*Infants* 50.

Iowa 1940. An automobile was not a "necessary," for an infant so as to preclude his recovery of payments made on conditional sales contract or render his father liable for the reasonable purchase price of the automobile where, though the minor used the automobile to transport himself to and from work at a plant located about 1½ miles from his home, he traveled to work on foot when he did not have the automobile. Code 1939, § 10493.—*Perry Auto Co. v. Mainland*, 294 N.W. 281, 229 Iowa 187.—*Child S* 122; *Infants* 50.

Iowa 1940. In consolidated actions by a minor against an automobile company to cancel a contract for purchase of automobile and to recover payments thereon, and by automobile company against the minor's parents and surety to require payment for the automobile on ground that the automobile was a "necessary," evidence of resale price of automobile after it had been returned to the automobile company by the minor, was not admissible to support claim that automobile had depreciated during the time that it was in possession of the minor.—*Perry Auto Co. v. Mainland*, 294 N.W. 281, 229 Iowa 187.—*Child S* 191; *Infants* 98; *Princ & S* 160.

Iowa 1908. Code Supp. 1907, § 3060a14, provides that, where a negotiable instrument is wanting in any "material particular," the person in possession has prima facie authority to complete it by filling up the blank therein, etc. Held, that the word "material" was not there used as synonymous with "necessary," so as to restrict the right to filling in an omission essential to the completion of a negotiable instrument, but included all omitted matter usually found in such instruments.—*Johnston v. Hoover*, 117 N.W. 277, 139 Iowa 143.—*Alt of Inst* 12; *Bills & N* 60.

Iowa 1901. In a contract relating to the use of an alley for railway tracks, providing that if it becomes necessary to close the alley the railway will vacate said track, "necessary" will be construed to be analogous to "expedient" or "appropriate," as where the city considers that the vacation of the

alley would be for the convenience and advantage of the citizens.—*Getchell & Martin Lumber & Mfg. Co. v. Des Moines Union R. Co.*, 87 N.W. 670, 115 Iowa 734.

Kan. 1992. "Necessary" as used in self-defense principles means prevention of imminent, serious bodily harm. K.S.A. 21-3211, 21-3211 comment.—*State v. Jordan*, 825 P.2d 157, 250 Kan. 180.—*Homic* 787, 789.

Kan. 1963. Other things being equal, there is a presumption against any intention on part of testator to disinherit his legal heirs who are favored by policy of law and may not be disinherited by mere conjecture; when testator intends to disinherit those who would take under statutes of descent he must indicate that intention clearly by plain words, express devise to others or necessary implication; by "necessary" implication is meant one which results from so strong a probability as to testator's meaning that an intent contrary to that imputed cannot be supposed.—*In re Lester's Estate*, 379 P.2d 275, 191 Kan. 83.—*Wills* 452.

Kan. 1917. Under Gen.St.1915, § 8353, requiring application for certificate of Public Utilities Commission validating securities to be issued to state that capital sought is necessary for specified statutory purpose, the word "necessary" means needful under all conditions attending the enterprise.—*Kansas City, K.V. & W. Ry. Co. v. Bristow*, 167 P. 1138, 101 Kan. 557, L.R.A. 1918E,342.—*Pub Ut* 117.

Ky. 1938. Under statute providing that a pass-way may be established whenever necessary to enable a person to attend certain places most convenient to his residence, word "necessary" is not to be read as though meaning absolutely necessary, but contemplates practical necessity, and, if applicant's outlet to highway or his own ground or the way he now has does not afford him practical access to the highway, and cannot be made to do so at a reasonable expense, then he is entitled to the establishment of the way as a necessity. Ky.St. § 3779a-1.—*Peery v. Hill*, 120 S.W.2d 762, 275 Ky. 105.—*Em Dom* 56.

Ky. 1935. Statute authorizing county board to discontinue school subdistricts when "necessary" held not to mean discontinuance must be indispensable, but means that if result would be reasonably useful, convenient, and proper, board has discretion to exercise authority. Ky.St.Supp.1934, § 4399-6.—*Board of Educ. of Bath County v. Goodpaster*, 84 S.W.2d 55, 260 Ky. 198.—*Schools* 44.

Ky. 1932. Legal services to protect life and liberty of insane person charged with crime was a "necessary."—*McGavock v. McGavock*, 55 S.W.2d 400, 246 Ky. 579.—*Mental H* 233.

Ky. 1931. Statute authorizing county board to consolidate school subdistricts when "necessary" held not to mean consolidation must be indispensable or strict necessity, but to authorize consolidation if reasonably useful, convenient, or proper. Ky.St. § 4426-1.—*Whalen v. County Bd. of Educ.*

of Harrison County, 39 S.W.2d 475, 239 Ky. 341.—Schools 36.

Ky. 1920. A landowner is not entitled to a passway over the lands of another under Ky.St. Supp.1918, § 3779a1, providing for such passway whenever “necessary” simply as a matter of convenience, but the necessity may be a practical necessity, and need not be an absolute necessity.—Coyle v. Elliott, 225 S.W. 489, 189 Ky. 569.—Priv Roads 1.

Ky. 1920. If landowner's outlet to highway affords him practical access thereto or can be made so at a reasonable expense, he is not entitled to the establishment of passway over another's land, under Ky.St. Supp.1918, § 3779a1, providing for establishment of private passway wherever “necessary.”—Coyle v. Elliott, 225 S.W. 489, 189 Ky. 569.—Priv Roads 1.

Ky. 1920. Where landowner had a road over his own land to the public highway of about the same distance from his residence as proposed passway over adjoining owner's land, and where existing road, though in bad condition, could be repaired and placed in good condition at a cost of but little more than damages awarded to adjoining owner for passway, there was not the necessity for the proposed passway contemplated by Ky.St. Supp.1918, § 3779a1, providing for establishment of such passway where “necessary.”—Coyle v. Elliott, 225 S.W. 489, 189 Ky. 569.—Priv Roads 1.

La.App. 1 Cir. 1975. “Natural” as used in statute providing that natural or necessary servitudes do not prescribe refers to servitudes originating from natural situation of places, while “necessary” refers to those servitudes imposed by law. LSA-C.C. arts. 660–708, 795.—Picard v. Shaubhut, 324 So.2d 517, writ not considered 326 So.2d 380.—Ease 32.

La.App. 1 Cir. 1944. In Fair Labor Standards Act, protecting persons in any occupation necessary to production of goods for interstate commerce, “necessary” means essential to a desirable or projected end or condition; not to be dispensed with without loss, damage, inefficiency or the like. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—Lyons v. H.K. Ferguson Co., 16 So.2d 587.—Commerce 62.47.

La.App. 1 Cir. 1944. A guard on project for construction of synthetic rubber plant was not engaged in work “necessary” to the intended production of goods for interstate commerce within Fair Labor Standards Act, and hence was not protected by such act. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—Lyons v. H.K. Ferguson Co., 16 So.2d 587.—Commerce 62.63.

La.App. 2 Cir. 1939. Husband was not liable for purchase price of electric refrigerator and radio purchased by wife without husband's authority or consent, on theory that such chattels were “necessary” for convenience of wife, where husband already owned radio and ice box. Rev.Civ.Code, art. 120.—Lacaze v. Kelsoe, 185 So. 676.—Hus & W 19(14).

La.App. 3 Cir. 1998. Expenses for entertainment, charitable donations, and hobbies, listed in former wife's affidavit in support of her petition for postdivorce alimony were not “necessary” as that term applied to permanent alimony.—Launey v. Launey, 722 So.2d 406, 1998-849 (La.App. 3 Cir. 12/9/98).—Divorce 237.

La.App. 3 Cir. 1998. Court of Appeal would treat former wife's claimed expenses for dry cleaning, yard maintenance and hair styling as “necessary,” for purposes of determining whether she was entitled to permanent alimony, where former wife was disabled as result of automobile accident.—Launey v. Launey, 722 So.2d 406, 1998-849 (La.App. 3 Cir. 12/9/98).—Divorce 237.

La.App. 3 Cir. 1993. Term “necessary” in context of expropriation proceeding, refers to necessity of purpose for expropriation, not necessity for specific location.—Calcasieu-Cameron Hosp. Service Dist. v. Fontenot, 628 So.2d 75, clarified on denial of rehearing, writ denied 634 So.2d 854, 1994-0168 (La. 3/18/94).—Em Dom 56.

La.App. 4 Cir. 1996. In context of expropriation, “necessary” refers to necessity of purpose for expropriation, not necessity for specific location. LSA-Const. Art. 1, § 4; LSA-R.S. 9:3176.—Coleman v. Chevron Pipe Line Co., 673 So.2d 291, 1994-1773, 1995-0896, 1995-0897 (La.App. 4 Cir. 4/24/96), rehearing denied, writ denied 681 So.2d 1259, 1996-1784 (La. 11/1/96).—Em Dom 56.

La.App.Orleans 1937. \$250 diamond wrist watch and band purchased by wife and charged to her account in her married name held not a “necessary” for payment of which husband, with whom wife was not living but from whom she was not legally separated, was liable, where previous dealings with merchant had been modest, and account had been dormant for some time, and where husband was not wealthy, as contended by wife, and wife had turned watch over to her mother. Civ. Code, art. 120.—D. H. Holmes Co. v. Van Ryper, 173 So. 584, modified 177 So. 417, 188 La. 431, 114 A.L.R. 905.—Hus & W 268(4).

Me. 1980. Term “necessary” as used in statute authorizing State Board of Education to make reasonable regulations it finds necessary means not indispensable but rather convenient or helpful in effectuating purposes of the act. 20 M.R.S.A. § 223.—Maine School Administrative Dist. No. 15 v. Reynolds, 413 A.2d 523.—Schools 47.

Md. 1941. Under Act 1872, c. 234, purporting to tax the gross receipts of a certain railroad, including receipts from all buildings and works “necessary” and expedient to the operation of its road, the word “necessary” does not mean only buildings and works indispensable to the road, but means those reasonably convenient and appropriate to the maintenance and operation of the road, such as grain elevators, warehouses, wharves, piers, and docks for the purpose of receiving and storing grain and freight which is shipped over the company's road, after their arrival for transfer or reshipment or at place of destination and before delivery to the consignee or owner; structures, depots, and stations

for the arrival, departure, protection, and accommodation of passengers, guests, bailees and licensees in the use of the freight, express and passenger and other railway services of the company as a common carrier.—*Levin v. Baltimore & O.R. Co.*, 17 A.2d 101, 179 Md. 125.

Md. 1901. The word “necessary” must be construed in the connection in which it is used. It is a word susceptible of various meanings. It may import absolute physical necessity, or that which is only convenient or useful or essential.—*City of Baltimore v. Chesapeake & P. Tel. Co.*, 48 A. 465, 92 Md. 692.

Md.App. 1997. In county zoning ordinance stating that district council had to find that proposed use was necessary in order to approve special exception for rubble fill, term “necessary” meant necessary rather than reasonably convenient or useful. *Prince George’s County, Md., Zoning Ordinance § 27-406(h)*.—*Brandywine Enterprises, Inc. v. County Council for Prince George’s County*, 700 A.2d 1216, 117 Md.App. 525, certiorari denied *Brandywine v. P.G. County*, 700 A.2d 1214, 347 Md. 253.—*Zoning 502.1*.

Mass. 1975. In order to show that medical expenses which exceeded \$500 were “necessary,” thus entitling plaintiff to recover for pain and suffering under no-fault insurance act, plaintiff must show that the treatment, which is the basis of the medical expenses, did legitimately arise out of the injury in the sense that treatment rendered by competent medical doctor was a bona fide effort to alleviate and ameliorate the injury. *M.G.L.A. c. 231 § 6D*.—*Victum v. Martin*, 326 N.E.2d 12, 367 Mass. 404.—*Autos 251.16*.

Mass. 1961. Within statute requiring municipalities to provide money necessary for support of public schools, term “necessary” means reasonably deemed by school committee to bear a relation to its statutory mandate. *M.G.L.A. c. 71 § 34*.—*Day v. City of Newton*, 174 N.E.2d 426, 342 Mass. 568.—*Schools 91*.

Mass. 1942. In some circumstances medical services furnished to a minor upon his own credit may be a “necessary”, the furnishing of which to him implies an obligation on his part to pay therefor what such services are reasonably worth. *M.G.L.A. c. 201, § 37*.—*Wiley v. Fuller*, 39 N.E.2d 418, 310 Mass. 597.—*Infants 50*.

Mass. 1930. College education held not such a “necessary” as to take students’ contract for lease of rooms out of rule relating to infants.—*Moskow v. Marshall*, 171 N.E. 477, 271 Mass. 302.—*Infants 50*.

Mass. 1930. College education is not, as respects infant’s liability on contract relating thereto, a “necessary” as matter of law, but may be proved to be such in fact.—*Moskow v. Marshall*, 171 N.E. 477, 271 Mass. 302.—*Infants 50*.

Mass. 1930. College education, even if needed by minor, is not a “necessary” for which he is liable if he has parents or guardian able and willing to

supply it.—*Moskow v. Marshall*, 171 N.E. 477, 271 Mass. 302.—*Infants 50*.

Mass. 1930. [Ed. Note.—For other definitions of “Necessary,” see Words and Phrases.]—*Moskow v. Marshall*, 171 N.E. 477, 271 Mass. 302.—*Infants 50*.

Mich. 1930. In proceeding to condemn lots, trial judge’s use interchangeably of term “necessary” used in Constitution and term “essential” as used in city charter held not error (Const. art. 13, § 1).—*City of Kalamazoo v. Balkema*, 233 N.W. 325, 252 Mich. 308.—*Em Dom 222(1)*.

Mich. 1930. Const. art. 13, s 1, provides that private property shall not be taken by public use without necessity therefor being first determined, and the Kalamazoo city charter provides that the city commission shall acquire by condemnation ‘the necessary property for the purpose in view’ ‘when-ever it deems the same essential for the welfare of the inhabitants of the city.’ The words ‘essential’ and “necessary” are defined as synonymous and are frequently used interchangeably.—*City of Kalamazoo v. Balkema*, 233 N.W. 325, 252 Mich. 308.—*Em Dom 222(1)*.

Mich. 1930. Furnishing proper education for child is “necessary,” payment for which may be recovered from parent.—*Sisson v. Schultz*, 232 N.W. 253, 251 Mich. 553.—*Child S 116*.

Mich. 1930. Whether tuning of piano at request of minor daughter taking piano lessons constituted “necessary,” for expense of which father could be held liable held question for jury.—*Sisson v. Schultz*, 232 N.W. 253, 251 Mich. 553.—*Child S 212*.

Mich. 1892. In proceedings to condemn land for the widening of a boulevard, the court did not err in charging that “the term “necessary” does not mean that it is indispensable or imperative, but only that it is convenient and useful; and therefore if you find that the improvement is useful, and a convenience and a benefit to the public, sufficient to warrant the expense of making it, then you may find it necessary.”—*Commissioners of Parks and Boulevards v. Moesta*, 51 N.W. 903, 91 Mich. 149.—*Em Dom 58*.

Mich. 1890. The term “necessary,” in How. Ann. St. § 3568, which enacts that turnpike companies shall be capable of purchasing and acquiring from any person or persons, by gift, grant, and otherwise, and holding, any lands, tenements, and hereditaments necessary to be used in the construction repair, and preservation of any such road, does not apply to the taking by eminent domain, by such company, of a tollhouse, or property on which to erect a tollhouse, by the side of its road, but the road may purchase such property. “In the case of *Pennsylvania R. Co. v. Leggett*, 41 N.J.L.(12 Vroom) 319, which was a case where a railroad corporation had land which it used for the purpose of its corporation, but which it was claimed was unnecessary to the complainant in the operation of its road, the court said, ‘Perhaps this land is not indispensably necessary to the company in the oper-

ation of its road, but indispensability is not the test whereby to determine what property in use will be exempt from taxation,' and the case of *New Jersey R. & Transp. Co. v. Hancock*, 35 N.J.L.(6 Vroom) 537, is cited in support of the proposition that absolute necessity is not required. In that case, in which the question arose whether the land in use of the railroad company was subject to taxation, the company being required to pay a specific tax, the court says that such an exempting clause will protect all property held by the company necessary to accomplish the end for which they were incorporated. The word 'necessary' in this connection does not mean indispensable; it embraces all things suitable and proper for carrying into execution the powers granted."—*Detroit & S. Plank Road Co. v. City of Detroit*, 46 N.W. 12, 81 Mich. 562.

Mich. 1887. The statement in the petition that the taking of the property is "required" for public use is equivalent to the statutory expression that it is "necessary" for public use.—*Flint & P.M.R. Co. v. Detroit & B.C.R. Co.*, 31 N.W. 281, 64 Mich. 350.—*Em Dom* 191(3).

Mich.App. 2002. In order to prove that an accommodation is "necessary" under the Fair Housing Amendments Act (FHAA), a disabled individual must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice. Civil Rights Act of 1968, § 804(f)(3)(B), 42 U.S.C.A. § 3604(f)(3)(B).—*Bachman v. Swan Harbour Ass'n*, 653 N.W.2d 415, 252 Mich.App. 400.—*Civil R* 131.

Mich.App. 1990. To ascertain what constitutes "necessary costs" for purposes of Headlee Amendment prohibition on reduction of state-financed proportion of necessary costs of activities or services required of local government by state law, trier of fact must first determine the "total costs" incurred by a school district in providing the required service or activity, including costs reimbursed by federal funding; once total costs have been determined, trier of fact must ascertain what portion of those costs were "necessary" by ascertaining the net costs of the service or activity provided by the local government; "net costs" are the actual costs that would be incurred by the state if the state were to provide the service or activity itself, and the measure of actual costs is to be determined by the pressures of the market place; after ascertaining necessary costs, trier of fact must ascertain the total amount of categorical aid received for that service or activity in the district and divide categorical aid by the total necessary costs; the percentage arrived at constitutes the "state financed portion of the necessary costs." M.C.L.A. Const. Art. 9, § 29.—*Durant v. Department of Educ.*, 463 N.W.2d 461, 186 Mich.App. 83, remanded 498 N.W.2d 736, 441 Mich. 930, on remand 513 N.W.2d 195, 203 Mich.App. 507, appeal denied 519 N.W.2d 898, 445 Mich. 919, reconsideration denied 522 N.W.2d 633, opinion after remand 541 N.W.2d 278, 213 Mich.App. 500, appeal denied 554 N.W.2d 312, 453 Mich. 892, order vacated on reconsideration 557 N.W.2d 309, 453 Mich. 952, appeal granted

557 N.W.2d 309, 453 Mich. 952, affirmed in part 563 N.W.2d 646, 454 Mich. 1219, affirmed—*States* 111, 123.

Mich.App. 1968. With respect to matter of liability of a minor for necessities he contracts to purchase, a proper education is a "necessary," but what is a proper education will depend on circumstances of particular case.—*Publishers Agency, Inc. v. Brooks*, 166 N.W.2d 26, 14 Mich.App. 634.—*Infants* 50.

Minn. 1993. In determining whether rehabilitation services are "necessary" for purposes of determining workers' compensation claimant's eligibility for services "necessary" does not mean "indispensable" rehabilitation, but rather, that which will materially assist employee in restoring his impaired capacity to earn livelihood. M.S.A. § 176.106.—*Wilson v. Crown Cork & Seal*, 503 N.W.2d 472, rehearing denied.—*Work Comp* 844.

Minn. 1987. If evidence sought to be elicited from attorney-witness can be produced in some other effective way, it may be that attorney is not "necessary" as witness, for purposes of rule that attorney likely to be necessary witness at trial is disqualified from acting as counsel in lawsuit. 52 M.S.A., Rules of Prof.Conduct, Rule 3.7.—*Humphrey on Behalf of State v. McLaren*, 402 N.W.2d 535.—*Atty & C* 22.

Minn. 1983. The term "necessary," in former statute requiring a finding that retraining benefits are necessary to establish a claimant's entitlement to benefits, did not mean indispensable, but meant that retraining was necessary if it would be likely to restore impaired capacity to earn a livelihood; earning capacity was impaired if employee's injury prevented him from returning to former employment or from securing advancement in that employment. M.S.A. § 176.101, subd. 3(45).—*Leahy v. St. Mary's Hosp.*, 339 N.W.2d 265.—*Work Comp* 844.

Minn. 1975. Retraining compensation should be found "necessary," within meaning of statute authorizing awarding of retraining benefits for injured employees, if it appears that the retraining will materially assist the employee in restoring his impaired capacity to earn a livelihood. M.S.A. § 176.101, subd. 8.—*Norby v. Arctic Enterprises, Inc.*, 232 N.W.2d 773, 305 Minn. 519.—*Work Comp* 844.

Minn. 1955. That easement must be "necessary" to beneficial enjoyment of land granted in order to create easement by implication on severance of dominant and servient tenements means reasonably necessary and not indispensable.—*Olson v. Mullen*, 68 N.W.2d 640, 244 Minn. 31.—*Ease* 16.

Minn. 1945. Under the statute authorizing the Commissioner of Highways to acquire "necessary" right of way for trunk highway system, absolute or indispensable necessity is not required but only reasonable necessity. Minn.St.1941, § 161.03, subd. 1.—*Petition of Burnquist*, 19 N.W.2d 394, 220 Minn. 48.—*Em Dom* 19.

Minn. 1943. The word "necessary" within rule that, to create easement by implication on sever-

ance of unity of ownership of dominant and servient tenements, easement must be necessary to beneficial enjoyment of land granted, but it does not mean indispensable, but reasonably necessary or convenient to beneficial use of property granted.—*Romanchuk v. Plotkin*, 9 N.W.2d 421, 215 Minn. 156.—Ease 16.

Minn. 1930. "Necessary" does not mean that a thing will possibly be needed at some remote time in the future.—*State v. Duluth St. Ry. Co.*, 229 N.W. 883, 179 Minn. 548.

Minn. 1926. Compensation for retraining is "necessary," if retraining will materially assist employé in restoring earning capacity. *Laws 1919*, c. 365, Gen.St.1923, §§ 2983–2988 (M.S.A. §§ 120.32–120.35); *Laws 1917*, c. 491, Gen.St.1923, §§ 3041–3047 (M.S.A. §§ 128.26, 128.27, 128.29, 128.32–128.35 and 120.11 note); Gen.St.1923, §§ 2989, 4274, subd. 43 (M.S.A. § 176.11).—*Tibbitts v. E.G. Staude Mfg. Co.*, 207 N.W. 202, 166 Minn. 139.—Work Comp 844.

Minn. 1916. The word "necessary" has not a fixed meaning or character peculiar to itself, but is flexible and relative. It may mean something which in order to accomplish a given object cannot be dispensed with, or it may mean something reasonably useful and proper.—*Marshall County v. Rokke*, 159 N.W. 791, 134 Minn. 346, Am. Ann. Cas. 1918D, 932.

Minn.App. 2000. "Necessary," within meaning of Federal Railway Safety Act's (FRSA) savings clause allowing State to adopt regulation that is necessary to eliminate or reduce an essentially local safety hazard, does not mean absolutely necessary, so that the existence of alternative remedial measures would prohibit the State from acting; rather, "necessary" means reasonably necessary for the accomplishment of the end in view under the particular circumstances. 49 U.S.C.A. § 20106(1).—*In re Speed Limit for Union Pacific R.R. Through City of Shakopee*, 610 N.W.2d 677, review dismissed.—R R 223; States 18.21.

Minn.App. 2000. Insurance policy language that requires an insurer to pay an amount "necessary" to replace windshields with windshields of like kind and quality simply requires reimbursement of reasonable charges for the services necessary to replace the windshield.—*Glass Service Co., Inc. v. Progressive Specialty Ins. Co.*, 603 N.W.2d 849.—Insurance 2722.

Minn.App. 1998. There are three elements of implied easement: (1) separation of title, (2) use which gives rise to easement shall have been so long continued and apparent as to show that it was intended to be permanent, and (3) that easement is necessary to beneficial enjoyment of land granted; "necessary" means reasonably necessary for beneficial enjoyment of property, and "apparent" means that indicia of easement must be plainly visible.—*Lake George Park, L.L.C. v. IBM Mid America Employees Federal Credit Union*, 576 N.W.2d 463, review denied.—Ease 16.

Minn.App. 1996. Court must take least drastic necessary step in determining disposition of juvenile delinquent, and to measure what disposition of juvenile delinquent is "necessary," for these purposes, court must consider severity of child's delinquency and severity of the proposed remedy; when severity of intervention is disproportionate to severity of the problem, the intervention is not necessary and cannot lawfully occur. M.S.A. § 260.185, subd. 1.—*Matter of Welfare of J.A.J.*, 545 N.W.2d 412.—Infants 223.1.

Minn.App. 1984. In considering a governmental body's condemnation petition, the court's task is to determine if the taking is necessary and authorized by law; "necessary" need not be absolute or indispensable necessity, but the condemning authority need only show that the proposed taking is reasonably necessary or convenient for furtherance of the end in view. M.S.A. § 117.075.—*City of New Ulm v. Schultz*, 356 N.W.2d 846.—Em Dom 56.

Minn.App. 1984. Nursing homes' payments of \$2,400 to administrative supervisor of their management company for social service consultation was not "necessary" within meaning of rules regarding allowable costs in determining reimbursement for care of medical assistant patients, since supervisor's duties were duplicative of duties assigned to social service specialist and director and there was no evidence of other similarly situated nursing homes employed consultant in addition to specialist and director, and thus, such payments were not allowable.—*Richview Nursing Home v. Minnesota Dept. of Public Welfare*, 354 N.W.2d 445, review denied.—Health 476.

Miss. 1948. "Necessary" means essential to a desirable or projected end or condition; not to be dispensed with, without loss, damage, inefficiency or the like.—*Stone v. Taylor Mach. Works*, 36 So.2d 137, 204 Miss. 790, suggestion of error sustained 37 So.2d 779, 204 Miss. 790.

Miss. 1942. In statutes conferring on administrative boards the "powers necessary" to be exercised to carry out provisions of the statute, although indispensable necessity is sometimes held to be the criterion, the quoted words are ordinarily construed to include means and measures which are reasonably useful and appropriate. "Necessary" is not a word of fixed and inflexible meaning, but in a particular connection it may denote something indispensable, and in another connection something reasonably useful and proper.—*Causey v. Jones*, 10 So.2d 356, 193 Miss. 495.

Miss. 1934. The word "necessary," as used in statute requiring railroad companies to make and maintain convenient and suitable crossings over their tracks for necessary plantation roads, does not mean only such roads as are indispensable, but also such as are reasonably convenient.—*Alabama & V. Ry. Co. v. Graham*, 157 So. 241, 171 Miss. 695.

Mo. 1947. That executor trust company of testator's will had in its employ competent legal advisers and that owners of the estate were represented by competent counsel did not preclude attorneys employed by executor from recovering for legal ser-

vices rendered in connection with inheritance tax matters on the ground that their services were not "necessary" within the statutory provisions for allowance against an estate. Mo.R.S.A. §§ 220, 2450, V.A.M.S. §§ 465.100, 484.030.—*In re Sternberg's Estate*, 204 S.W.2d 761.—Ex & Ad 216(2).

Mo. 1919. Where there was no evidence of defendant's good character sufficient to authorize the giving of an instruction on the subject, the failure to instruct on that question is no ground for objection, R.S.1909, § 5231 (V.A.M.S. § 546.070), requiring the court to instruct the jury upon all questions of law "necessary" for their information, not requiring instructions on a matter not raised.—*State v. Byrd*, 213 S.W. 35, 278 Mo. 426.—Crim Law 814(12).

Mo. 1918. V.A.M.S.Const. art. 4, § 48, forbidding the payment of any claim against the state created under a contract made without express authority of law, was not intended to abrogate the doctrine of the common law that incidental powers may accompany the grant of an express power as necessary to its exercise, but to enforce the rule of strict construction in determining what agreements public officials may make in connection with their duties when such agreements are not mentioned in the law, imposing the duty; the word "necessary" meaning an indispensable condition or requisite.—*State ex rel. Kelly v. Hackmann*, 205 S.W. 161, 275 Mo. 636.—States 90.

Mo.App. W.D. 2000. Interest in the subject of an action, required for a person to be deemed "necessary" to the action, does not include a mere, consequential, remote, or conjectural possibility of being affected by the result of the action in some manner; instead, the interest must be such a direct claim upon the subject matter of the action that the person will either gain or lose by direct operation of the judgment. V.A.M.R. 52.04(a)(2)(i).—*Missouri Nat. Educ. Ass'n v. Missouri State Bd. of Educ.*, 34 S.W.3d 266.—Parties 3, 21.

Mo.App. W.D. 1993. Authority of conservator to seek court's approval of real estate sale contract after death of protectee does not exist except when such sale is "necessary" to windup administration of conservatorship; sale of real property in conservatorship estate is "necessary" only when conservator of estate cannot "windup" administration of estate without selling real property. V.A.M.S. §§ 475.083, subds. 1(5), 3, 475.240.—*Summers v. Correll*, 853 S.W.2d 397.—Mental H 259.

Mo.App. W.D. 1992. Party is "necessary" if complete relief cannot be accorded among those already parties. V.A.M.R. 52.04(a).—*Shelter Mut. Ins. Co. v. Flint*, 837 S.W.2d 524, rehearing, transfer denied, and transfer denied.—Parties 18, 29.

Mo.App. 1970. Word "necessary" within ordinance establishing conditional uses to effect that such uses be necessary for public convenience at specified locations means suitable, proper and convenient to ends sought.—*State ex rel. Union Elec. Co. v. University City*, 449 S.W.2d 894.—Mun Corp 594(1).

Mo.App. 1948. Watchman hired by landlord of large warehouse to guard goods, check freight cars and protect against fire and theft in building and along trackage used by tenant hardware jobber engaged in interstate commerce and by grocery companies packaging coffee on the premises and labeling canned goods ultimately shipped in interstate commerce was engaged in an occupation "necessary" for the "production of goods in commerce" within the Fair Labor Standards Act of 1938. Fair Labor Standards Act of 1938, §§ 1 et seq., 3(j), 7(a), 29 U.S.C.A. §§ 201 et seq., 203(j), 207(a).—*Spaeth v. Washington University*, 213 S.W.2d 276, 240 Mo.App. 79.—Commerce 62.63.

Mo.App. 1942. A "necessary" is an article which a party actually needs. It is not enough to show that the article is per se classed as necessary such as food or clothing but it must also be actually needed at the time.—*State v. Earnest*, 162 S.W.2d 338.

Mo.App. 1937. In prosecution under statute dealing with abandonment of wife or children, and penalizing failure to provide "necessary" food, clothing, or lodging, it is not enough to show that article is per se classed as necessary, such as food and clothing, but it must also be shown to be actually needed at the time, a "necessary" article being one which the party actually needs. R.S. 1929, § 4026 (V.A.M.S. § 559.350).—*State v. Higbee*, 110 S.W.2d 789.—Hus & W 313.

Mo.App. 1937. Trailer purchased by infant who was married and maintained his own home and who used the trailer in his business, profits of which supported himself and family, held not a "necessary" so as to bar infant from disaffirmance of the contract for purchase of trailer after it had been delivered to and put in use by him.—*Freiburghaus v. Herman Body Co.*, 102 S.W.2d 743.—Infants 50.

Mo.App. 1937. Under statute penalizing father who, without lawful excuse, refuses or neglects to provide for his infant child "necessary" food, clothing, or lodging, it is not enough to show that article is per se classed as necessary, such as food and clothing, but it must also be actually needed at the time. Mo.R.S.A. § 4420.—*State v. Russell*, 102 S.W.2d 727.—Child S 653.

Mo.App. 1916. While a debt by the husband for the rent of a suitable residence for the family is a "necessary" within Rev.St.1909, § 8309, V. A.M.S. § 451.250, making the property of the wife liable for such debts, yet damages for the husband's breach of a contract for the leasing of such premises is not a necessary, and the wife's property cannot be reached to satisfy such claim.—*Dougherty v. McClelland*, 182 S.W. 766, 192 Mo.App. 498.

Mo.App. 1905. The word "necessity," in common use, connotes different degrees of necessity. It sometimes means indispensable; at others, needful, requisite, incidental, or conducive. In its primary sense, it signifies a thing or act without which some other thing or act cannot be done or exist. The word "necessary," as applied to the determination of an agent's power to do an incidental act, should be held to mean an act or measure requisite to

enable him to discharge his main duty—something more urgently required than is signified by the words, “appropriate,” “suitable,” or “expedient.”—*St. Louis Gunning Advertising Co. v. Wanamaker & Brown*, 90 S.W. 737, 115 Mo.App. 270.

Mont. 1985. Evidence that highway department’s planned location of improved road was shortest, most direct, and least expensive route which was consistent with design objectives established that land which Department sought to acquire was “necessary” for the improvement. *MCA 60-4-104(2)(b)*, 70-30-111(2).—*State By and Through Dept. of Highways v. Standley Bros.*, 699 P.2d 60, 215 Mont. 475.—Em Dom 196.

Mont. 1975. Use of term “necessary” within context of restrictive covenants pertaining to “necessary outbuildings” means convenient to dwelling.—*Higdem v. Whitham*, 536 P.2d 1185, 167 Mont. 201.—*Covenants 51(2)*.

Mont. 1975. Grand juries are constitutional bodies providing alternative method of initiating criminal charges and the word “necessary” as used in statute relating to the empaneling of grand jury when district judge considers it necessary does not mean “absolutely necessary.” *R.C.M.1947, § 95-1401 et seq.; Const.1972, art. 2, § 20*.—*State ex rel. Woodahl v. District Court of First Judicial Dist., In and For Lewis and Clark County*, 530 P.2d 780, 166 Mont. 31.—Gr Jury 20.

Mont. 1965. Statutory requirement that Highway Commission’s “taking” must be “necessary” to authorized use means that particular property taken should be reasonably requisite and proper for accomplishment of purpose for which it is sought under peculiar circumstances of each case. *R.C.M. 1947, §§ 31-1615, 93-9905*.—*State Highway Commission v. Crossen-Nissen Co.*, 400 P.2d 283, 145 Mont. 251.—Em Dom 56.

Mont. 1938. The use by a public officer, or person under private employment, of reasonable sum as revolving fund to pay his mileage and expenses allowed by law, or by contract of employment, in carrying out duties of his office or employment, is for “necessary” use of his family, within meaning of statute providing for exemption of earnings shown to be “necessary” for use of debtor’s family, since word “necessary” does not mean absolute or indispensable necessity, but means reasonable, requisite, and proper. *Rev.Codes 1935, § 9429*.—*Williams v. Sorenson*, 75 P.2d 784, 106 Mont. 122.—Exemp 48(1).

Mont. 1933. Statute authorizing highway commission to condemn land “necessary” for highway purposes means land reasonably requisite and proper for accomplishment of end in view, not absolute necessity of particular location (*Rev.Codes 1921, § 1797*).—*State v. Whitcomb*, 22 P.2d 823, 94 Mont. 415.—Em Dom 56.

Mont. 1933. Whether particular route for highway is “necessary” involves consideration of greatest good for public with least injury to citizens whose property is taken, which are questions of fact

(*Rev.Codes 1921, § 1797*).—*State v. Whitcomb*, 22 P.2d 823, 94 Mont. 415.—Em Dom 56.

Mont. 1933. Allegation that taking of described lands for highway purposes was “necessary” was an allegation of ultimate fact or conclusion of fact, not of law (*Rev.Codes 1921, § 1797*).—*State v. Whitcomb*, 22 P.2d 823, 94 Mont. 415.—Plead 8(2).

Mont. 1931. “Necessary,” as used in connection with right to condemn private property for public use, does not mean an absolute or indispensable necessity, but reasonable, requisite, and proper for accomplishment of end in view, under the peculiar circumstances.—*State v. District Court of Fourth Judicial Dist. in and for Mineral County*, 300 P. 916, 90 Mont. 191.

Mont. 1912. Where plaintiff in an employee’s personal injury action alleged that it was “necessary” for him to do his work in a certain manner held not error to refuse to instruct that he was bound to prove that allegation, and to instruct, in lieu thereof, that it was not necessary to show that he was absolutely bound to do his work in that way, etc.—*Killeen v. Barnes-King Development Co.*, 127 P. 89, 46 Mont. 212.—Trial 251(8).

Mont. 1912. “Necessary,” as used in *Rev.Codes, § 7334*, providing for the taking of land for public use, defined.—*Northern Pac. Ry. Co. v. McAdow*, 121 P. 473, 44 Mont. 547.—Em Dom 56.

Mont. 1895. The word “necessary,” in *Code Civ.Proc. 1887, § 601*, providing that land appropriated to a public use cannot again be so appropriated unless the use to which it is to be applied is a more necessary public use, cannot be construed to mean absolutely necessary, but a railroad company may acquire the part of a right of way of another company not used for its roadbed where such right of way is the most desirable route for the new road, though it might be possible to build it without using the right of way.—*Butte, A. & P. Ry. Co. v. Montana U. Ry. Co.*, 41 P. 232, 16 Mont. 504, 50 *Am.St.Rep.* 508, 31 *L.R.A.* 298.

Neb. 1994. Operator of long-term care facility failed to establish that interest on loan that was used to pay off equity interest of owner was “necessary,” and thus, Medicaid reimbursement of interest was not permitted; there was no testimony as to purpose of original loan to facility or as to what money was actually used for, and there was no testimony that replacement loan was actually used to meet patient care needs. *Neb. Admin. R. & Regs. tit. 471, secs. 12-011.03, 12-011.04, 12-011.05*.—*Sunrise Country Manor v. Nebraska Dept. of Social Services*, 523 N.W.2d 499, 246 Neb. 726.—Health 487(4).

Neb. 1990. “Necessary,” when used in a statute, may mean anything from “indispensable” to “convenient.”.—*In re Application A-16642*, 463 N.W.2d 591, 236 Neb. 671.—Statut 199.

Neb. 1931. The word “necessary” in respect to implied powers of county commissioners has been held to mean no more than the exercise of such powers as are reasonably required by the exigencies

of each case as it arises.—*Lynn v. Kearney County*, 236 N.W. 192, 121 Neb. 122.

Neb. 1913. “Necessary,” in respect to “necessary” implied powers of county commissioners, means no more than exercise of such powers as are reasonably required by the exigencies of each case that arises.—*Emberson v. Adams County*, 142 N.W. 294, 93 Neb. 823.

N.J. 1977. For purpose of statute providing property tax exemption for land owned by nonprofit organization which is “necessary for the fair enjoyment” of organization’s buildings, the phrase “necessary for the fair enjoyment” refers to the use of the buildings, and the term “necessary” does not mean absolutely indispensable but refers to what is reasonably necessary to accomplish organization’s purposes. N.J.S.A. 54:4-3.6.—*Boys’ Club of Clifton, Inc. v. Jefferson Township*, 371 A.2d 22, 72 N.J. 389.—Tax 241.1(4).

N.J.Super.A.D. 2002. Roller Skating Rink Safety and Fair Liability Act does not immunize a rink operator from liability for negligently instructing a person how to roller skate; under the Act, skater is only deemed to assume “inherent” risks of roller skating that are “obvious” and “necessary,” and rink operator’s failure to give adequate instruction to a person who has never skated before is not an “inherent,” “obvious” or “necessary” risk of skating, and instead, it is a risk that can be avoided by proper instruction and supervision. N.J.S.A. 5:14-6.—*Derricotte v. United Skates of America*, 794 A.2d 867, 350 N.J.Super. 227.—*Theaters* 6(6), 6(38).

N.J.Super.A.D. 1961. Automobile used by infant to drive to and from work may be a “necessary.”—*Bancredit, Inc. v. Bethea*, 168 A.2d 250, 65 N.J.Super. 538.—*Infants* 50.

N.J.Super.A.D. 1957. The word “necessary” as used in setting forth the factors indicative of the existence of a quasi-easement, differs from the “necessity” required in establishing a “way of necessity” and what is intended is nothing greater than a reasonable necessity, and not the absolute necessity required in establishing an “easement of necessity.”—*Adams v. Cale*, 137 A.2d 92, 48 N.J.Super. 119.—*Ease* 15.1.

N.J.Super.A.D. 1956. For purposes of rule creating an easement by implied grant when tract retained by grantor had been subject to an “apparent,” “continuous,” “permanent,” “necessary” use for benefit of land conveyed, an absolute necessity is not essential, it being sufficient that easement be reasonably necessary to proper enjoyment of dominant tenement, or to its reasonable and beneficial enjoyment.—*A. J. & J. O. Pilar, Inc. v. Lister Corp.*, 119 A.2d 472, 38 N.J.Super. 488, certification granted 121 A.2d 741, 21 N.J. 128, affirmed 123 A.2d 536, 22 N.J. 75.—*Ease* 15.1.

N.J.Super.A.D. 1953. A common school education is a “necessary” to which a child is entitled at expense of parents.—*Jonitz v. Jonitz*, 96 A.2d 782, 25 N.J.Super. 544.—*Child* S 116.

N.J.Super.A.D. 1952. Physician who X-rayed swollen foot and ankle of child who lived with her parents, discovered a broken bone, and applied a cast, provided the child with a “necessary”, but in view of fact that parents had not authorized such services, and had, in fact, declined to provide child with medical aid, physician was not entitled to collect reasonable fee from parents.—*Greenspan v. Slate*, 92 A.2d 47, 22 N.J.Super. 344, certification granted 94 A.2d 699, 11 N.J. 410, reversed 97 A.2d 390, 12 N.J. 426.—*Child* S 113; *Health* 943.

N.J.Sup. 1937. Evidence that husband and wife had in their home large cabinet radio in good order and smaller radio, and that husband gave wife ample funds for her wants while he was in Europe did not authorize dealer’s recovery from husband for radio sold to wife and charged to her during husband’s absence, since it did not appear that radio was “necessary.”—*Gruenberg v. Douglas*, 193 A. 176, 118 N.J.L. 398.—*Hus & W* 19(14).

N.J.Sup. 1907. “Necessary,” in legislative acts, according to the right of eminent domain, does not mean an absolute or indispensable necessity, and only that the taking provided for is reasonably necessary.—*Sayre v. City of Orange*, 67 A. 933.—*Em Dom* 56.

N.J.Sup. 1896. In exemptions from taxation to railroad corporations of property necessary to the conduct of their business, “necessary” does not mean indispensable, but embraces all things suitable and proper for carrying into execution the granted powers.—*State v. Inhabitants of Verona Tp.*, 34 A. 1060, 59 N.J.L. 94, 30 *Vroom* 94.

N.J.Super.L. 2000. Limited Access Highway Act authorized Commissioner of New Jersey Department of Transportation (DOT) to condemn vacant, unimproved, and unoccupied private property in mitigation of shallow water and shoreline habitats that would be impacted by construction of limited access highway; such property was “necessary” for project within meaning of Act, in that DOT could not obtain necessary permits unless it built replacement shallow water habitat to compensate for lost habitat. N.J.S.A. 27:7A-3.—*State ex rel. Com’r of Transp. v. Trap Rock Industries, Inc.*, 751 A.2d 633, 331 N.J.Super. 258, affirmed 768 A.2d 227, 338 N.J.Super. 92.—*Em Dom* 56.

N.J.Tax 1983. For purposes of statute exempting from taxation the land of an educational institution if it is necessary for the fair enjoyment of the buildings, “fair enjoyment” has consistently been equated with “use,” and to be considered “necessary” land need not be absolutely indispensable to the exempt buildings as long as it is reasonably necessary to have accomplished the purposes of the organization seeking exemption. N.J.S.A. 54:4-3.6.—*Fairleigh Dickinson University v. Floram Park Borough*, 5 N.J.Tax 343.—*Tax* 242(2.1).

N.J.Ch. 1916. Statutory provision that construction of sewers should not unnecessarily interrupt or impede travel means reasonably “necessary,” and interruption of street railway traffic for eight months was unreasonable if there was a method of avoiding interruption.—*Public Service Ry. Co. v.*

Frazer, 105 A. 387, 89 N.J.Eq. 569, affirmed 105 A. 391, 89 N.J.Eq. 569.

N.J.Ch. 1914. The word “necessary,” as applied to interference with street railway traffic in the laying of sewers, means such as is “reasonably necessary” in view of all duties imposed on the sewage commissioners, expense being one consideration, and the commission must provide for temporary accommodation of street railway traffic.—Public Service Ry. Co. v. Frazer, 102 A. 890, 87 N.J.Eq. 679.—Mun Corp 269(5).

N.J.Co. 1970. Under New Jersey statute permitting electronic surveillance for as long as 30 days, duration of interception must be limited to what is necessary under the circumstances, and term “necessary” is infused with substantive content by basic statute and imports what is convenient, useful, appropriate, suitable, proper or conducive to end sought as expressed in the operative enactment. N.J.S.A. 2A:156A-12, subd. f.—State v. Christy, 270 A.2d 306, 112 N.J.Super. 48.—Tel 519.1.

N.M. 1945. The meaning of word “necessary,” as used in relation to establishment of implied easement upon severance of unity of ownership of a tract of land, does not mean an absolute necessity, but means that there could be no other reasonable mode of enjoying the dominant tenement without the easement.—Venegas v. Luby, 164 P.2d 584, 49 N.M. 381.—Ease 16.

N.M. 1940. Juvenile delinquent home authorized by statute in first-class counties is a “necessary public building” within constitutional provision prohibiting borrowing by counties except for erecting necessary public buildings, the word “necessary” not being used as meaning indispensable but rather as being synonymous with “needful.” Laws 1939, c. 75, § 1; Const. art. 9, § 10.—Hutcheson v. Ather-ton, 99 P.2d 462, 44 N.M. 144.—Counties 153.

N.M. 1912. The legislature has the right to determine “necessary” appropriations for educational institutions, created and established by existing law, and to provide therefor in the general appropriation bill. Such appropriations being authorized under the provisions of sec. 16 of article IV, which permits the inclusion of “expenses required by existing law.”—State ex rel. Lucero v. Marron, 128 P. 485, 17 N.M. 304.—States 131.

N.M. 1912. The word “necessary” or “required,” as used, in connection with expenses, does not mean those expenses which are absolutely indispensable and without which the government could not be maintained, but it imports no more than that one thing is convenient or essential to another, and the choice of what may be so convenient, useful or essential is necessarily left to the legislature and cannot be reviewed by the courts.—State ex rel. Lucero v. Marron, 128 P. 485, 17 N.M. 304.—States 131.

N.M. 1912. The Legislature has the right to determine “necessary” appropriations for educational institutions, created by existing law, and to provide therefor in the general appropriation bill, being authorized to do so by Const. art. 4, § 16,

permitting the inclusion of “expenses required by existing law.”—State ex rel. Lucero v. Marron, 128 P. 485, 17 N.M. 304.—Statut 107(7).

N.M. 1912. The words “necessary” and “required,” used in connection with expenses, do not mean expenses absolutely indispensable, but only that one thing is convenient or essential to another, and the choice of what may be so convenient or essential is left to the Legislature.—State ex rel. Lucero v. Marron, 128 P. 485, 17 N.M. 304.—Statut 107(7).

N.Y. 1968. As used in statute providing that there shall be full disclosure of all evidence material and necessary in prosecution or defense of an action, regardless of burden of proof, the word “necessary” means needful and not indispensable. CPLR 3101(a).—Allen v. Crowell-Collier Pub. Co., 288 N.Y.S.2d 449, 21 N.Y.2d 403, 235 N.E.2d 430.—Pretrial Proc 31.

N.Y. 1908. The word “necessary,” as used in a statute authorizing the taking of land necessary for canals, does not mean absolute and indispensable, or that, without the use of the land in the given case, the work would not possibly go on. That would be the same as extreme necessity. The Legislature used the word in a more reasonable and popular sense. It is sufficient that the land used and the materials taken from it are needful and conducive to the object and more convenient in the application and less valuable, and the use of them less injurious to the owner than any that might readily be selected. There must, from the reason of the thing and the nature of the case, be great latitude of discretion in the selection of land and the materials. Under Canal Law, Laws 1894, p. 635, c. 338, § 70, providing that the superintendent of public works may take any lands, the appropriation of which, for the use of canals and the works connected therewith, shall in his judgment be necessary, section 71 (page 636) authorizing a permanent appropriation, and section 72 (page 636) authorizing a temporary appropriation, the determination as to necessity of appropriation, which need not be an absolute necessity, and as to whether a permanent appropriation of the lands be necessary or whether a permanent easement or a temporary use of the lands will be sufficient, is for such superintendent acting in good faith and with sound discretion.—People v. Fisher, 83 N.E. 482, 190 N.Y. 468.

N.Y. 1899. The word “necessary” means such as must be; impossible to be otherwise; not to be avoided; inevitable.—Lockwood v. Mildeberger, 53 N.E. 803, 159 N.Y. 181, reargument denied 54 N.E. 1093, 159 N.Y. 562.

N.Y.A.D. 1 Dept. 1997. Fact that commencement of suit against insurer by insureds’ discharged law firm may have accelerated settlement negotiations did not establish that suit was “necessary,” as required before firm was entitled to one-third contingency fee under retainer agreement, where administrative appeal was pending and insureds had professed desire to avoid litigation.—Shalom Toy, Inc. v. Each And Every One of the Members of the

New York Property Ins. Underwriting Ass'n. 658 N.Y.S.2d 1, 239 A.D.2d 196.—Atty & C 134(2).

N.Y.A.D. 1 Dept. 1992. Under Uniform Act to Compel the Attendance of Witnesses from Without the State, court ruling on application based on another state's certificate of materiality must consider any claim of privilege asserted by witness whose attendance is sought in evaluating materiality of evidence sought; "inadmissible evidence" cannot be considered "necessary" or "material" within meaning of the statute. McKinney's CPL § 640.10.—Application of Codey, 589 N.Y.S.2d 400, 183 A.D.2d 126, leave to appeal granted In re Codey, 592 N.Y.S.2d 915, 188 A.D.2d 1094, reversed 605 N.Y.S.2d 661, 82 N.Y.2d 521, 626 N.E.2d 636.—Gr July 36.3(2).

N.Y.A.D. 1 Dept. 1952. Where wife left home, and husband detained child, and wife instituted habeas corpus proceeding to secure custody of child and also instituted separation action, and final determination in separation action was that wife was not justified in leaving marital home, attorney who rendered legal service to wife in habeas corpus proceedings was not entitled to recover therefor from husband, since such service was not a "necessary" for which husband could be held responsible.—Griston v. Rosenfield, 113 N.Y.S.2d 616, 280 A.D. 273.—Hus & W 19(18).

N.Y.A.D. 1 Dept. 1950. Legal services rendered to the wife in marital litigation fall in the same category as any other "necessary" and the husband's liability therefor is determined by the same standard of judgment as his liability for other necessities.—Weidlich v. Richards, 94 N.Y.S.2d 546, 276 A.D. 383.—Hus & W 19(18).

N.Y.A.D. 1 Dept. 1948. Under the Civil Practice Act permitting parties to conduct examinations before trial to elicit testimony which is material and necessary in the prosecution or defense, it is "necessary" that each party produce material evidence and that the party having burden of proof go forward and make out a prima facie case in the first place, and in the end prevail by a fair preponderance of the evidence. Civil Practice Act, § 288.—Marie Dorros, Inc., v. Dorros Bros., 80 N.Y.S.2d 25, 274 A.D. 11.—Pretrial Proc 173.

N.Y.A.D. 1 Dept. 1943. In statute providing that personalty embraced in power to bequeath passes by will purporting to pass all personalty of testator, unless contrary intent appears expressly or by necessary implication, "necessary implication" results only where the will permits of no other interpretation, and "necessary" means such as must be; impossible to be otherwise; not to be avoided; inevitable. Personal Property Law, § 18.—Chase Nat. Bank of City of New York v. Central Hanover Bank & Trust Co., 39 N.Y.S.2d 541, 265 A.D. 434.—Wills 589(4).

N.Y.A.D. 2 Dept. 1930. Ordinarily, furnishing classical or professional education by parent to child is not "necessary," especially where child has become of age.—Halsted v. Halsted, 239 N.Y.S. 422, 228 A.D. 298.—Child S 120.

N.Y.A.D. 2 Dept. 1919. "Necessary" indicates something indispensable, which cannot be disregarded or omitted.—John Wanamaker, New York, Inc., v. Otis Elevator Co., 175 N.Y.S. 78, 186 A.D. 655, affirmed Lester C. Hebbard & Co., Inc. v. Blake, 176 N.Y.S. 908, 188 A.D. 962, affirmed as modified 126 N.E. 718, 228 N.Y. 192.

N.Y.A.D. 2 Dept. 1908. In Code Civ.Proc. § 870 et seq., and general rule of practice 82, requiring, for the examination of an adverse party before trial, a showing by affidavit that the testimony is material and necessary, the words "material" and "necessary" are not used synonymously, even if the word "necessary" does not mean indispensable to the making of an issue.—Koplin v. Hoe, 108 N.Y.S. 602, 123 A.D. 827.—Discov 55.

N.Y.A.D. 3 Dept. 1995. Optical records of motorist who had struck pedestrian were "material" and "necessary," and could be discovered in connection with action brought by pedestrian against motorist, where motorist at examination before trial indicated that she had not been prescribed corrective lenses prior to accident and pedestrian contended that requested documents would show to the contrary. McKinney's CPLR 3101(a).—Robinson v. Meca, 632 N.Y.S.2d 728, 214 A.D.2d 246.—Pretrial Proc 382.

N.Y.A.D. 3 Dept. 1995. For information to be "necessary," and subject to discovery, it is not required that information be indispensable, but only that it be needful; fact that material may later be ruled inadmissible does not foreclose disclosure. McKinney's CPLR 3101(a).—Robinson v. Meca, 632 N.Y.S.2d 728, 214 A.D.2d 246.—Pretrial Proc 31.

N.Y.A.D. 3 Dept. 1973. "Necessary," within rule that there shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action, means needful and not dispensable. CPLR 3101(a).—Shutt v. Pooley, 349 N.Y.S.2d 839, 43 A.D.2d 59.—Pretrial Proc 28, 31.

N.Y.A.D. 3 Dept. 1909. Where a debtor testified that at the time of the levy on alleged exempt potatoes he had about 125 bushels, and that it took about 75 bushels a year for himself and family, and defendant's evidence showed that 27 sacks, each holding between 1½ and 2 bushels, and 40 or 50 bushels loose in the pit, were left after the levy, the jury might find that plaintiff had necessary potatoes until the next annual period, and that the potatoes levied on were not exempt within Code Civ.Proc. § 1390, providing that all necessary vegetables actually provided for family use shall be exempt; the word "necessary" qualifying the extent of the exemption.—McCarthy v. McCabe, 115 N.Y.S. 829, 131 A.D. 396.—Exemp 148.

N.Y.A.D. 3 Dept. 1909. The term "necessary," as used in Code Civ.Proc. § 1390, providing that all "necessary vegetables" actually provided for family use should be exempt from levy, is a word of qualification, and qualifies the extent of the exemption.—McCarthy v. McCabe, 115 N.Y.S. 829, 131 A.D. 396.

N.Y.A.D. 4 Dept. 2002. "Necessary," for purposes of provisions of real property tax law prohibiting separate assessment of property in same economic unit associated with oil and gas rights, and defining economic unit, in part, as real property necessary to drill, mine, operate, develop, extract, produce, collect, deliver, or sell oil or gas to point of sale to commercial purchaser or pipeline or equipment of a user, means essential or intrinsic to a potential or prospective sale or delivery of gas or to an actual or ongoing sale or delivery of gas. McKinney's RPTL §§ 590, subd. 2, 594, subds. 1, 2.—*Nornew, Inc. v. Marsh*, 750 N.Y.S.2d 236.—Tax 348.1(5).

N.Y.A.D. 4 Dept. 1940. The word "necessary" does not mean absolute and indispensable.—*Dunbar & Sullivan Dredging Co. v. State*, 20 N.Y.S.2d 127, 259 A.D. 440.

N.Y.A.D. 4 Dept. 1917. A party may have an examination of the adverse party before trial, though he might prove by another what he seeks to prove by the examination; "necessary," in Code Civ. Proc. § 872, subd. 4, and general rule 82, providing for affidavit that the testimony is material and necessary, not meaning absolutely necessary or indispensable.—*Terry v. Ross Heater & Mfg. Co.*, 167 N.Y.S. 747, 180 A.D. 714.

N.Y.Sup. 1977. Where it was clearly demonstrated that no criminal charges were made or contemplated, pedestrian was struck by automobile and died within one hour thereafter, and desire of medical examiner to perform autopsy merely to determine whether pedestrian died by reason of injury to one vital organ as opposed to another was far outweighed by religious reasons advanced by pedestrian's family for opposing autopsy, autopsy was not "necessary" within meaning of statute authorizing autopsy when necessary to establish cause of death or to determine means or manner of death and county medical examiner was therefore enjoined and restrained from performing autopsy upon pedestrian. County Law §§ 673, 674.—*Webberman v. Zugibe*, 394 N.Y.S.2d 371, 90 Misc.2d 254.—*Coroners 14*; Inj 76.

N.Y.Sup. 1973. Where parents of deceased were Orthodox Jews and one of the tenets of their religion prohibited any procedure in the nature of an autopsy, where deceased sustained multiple serious injuries in automobile accident and purpose of proposed autopsy was to determine which of the injuries was the cause of death, and where there was no evidence nor suspicion of criminality or foul play involved in the accident, the autopsy was not sufficiently "necessary" to justify the performance thereof. County Law §§ 673, 674, subd. 3(a).—*Wilensky v. Greco*, 344 N.Y.S.2d 77, 74 Misc.2d 512.—*Dead Bodies 1*.

N.Y.Sup. 1972. Word "necessary" within statute requiring a full disclosure of all evidence material and necessary in prosecution or defense of an action, means "needful" or "relevant" even though a prima facie case could be made without it. CPLR 3101(a).—*Venable v. Brockett*, 330 N.Y.S.2d 604, 69 Misc.2d 726.—*Pretrial Proc 31*.

N.Y.Sup. 1959. "Necessary" within statutory provision that taking of land must be necessary for public purposes does not mean absolute and indispensable. Highway Law, § 1 et seq.; Public Authorities Law, § 1 et seq.—*Saso v. State*, 192 N.Y.S.2d 272.—*Em Dom 56*.

N.Y.Sup. 1959. A proper education is "necessary," so that a contract by an infant therefor is binding, but what is a proper education will depend on circumstances, and, while common school education is a necessary, a classical or professional education is not a necessary, in absence of special circumstances.—*Siegel & Hodges v. Hodges*, 191 N.Y.S.2d 984, 20 Misc.2d 243, affirmed 197 N.Y.S.2d 246, 10 A.D.2d 646, appeal denied 201 N.Y.S.2d 497, 10 A.D.2d 860, appeal granted 202 N.Y.S.2d 1026, 8 N.Y.2d 706, 168 N.E.2d 396.—*Infants 53*.

N.Y.Sup. 1949. Under rule that husband must provide for his wife and children whatever is necessary for his suitable clothing and maintenance, that which is "necessary" is that which is suitable according to his and their station and condition in life.—*Patino v. Patino*, 90 N.Y.S.2d 798, 195 Misc. 887, affirmed 103 N.Y.S.2d 1020, 278 A.D. 756, appeal denied 105 N.Y.S.2d 907, 278 A.D. 921, affirmed 106 N.E.2d 276, 303 N.Y. 999.—*Hus & W 19(14)*.

N.Y.Sup. 1949. The word "necessary" does not have a fixed character, peculiar to itself, but admits of all degrees of comparison, and is often connected with other words, which increase or diminish the impression mind receives of the urgency it imports.—*Jacoby v. Coster*, 88 N.Y.S.2d 545, 194 Misc. 1039.

N.Y.Sup. 1948. Husband and father in a divorce action may be compelled to provide his minor child with more than a public school education by direct order of court, although a college education is not a "necessary" within meaning of rule permitting a third party to maintain an action against a parent for necessities furnished a child.—*Cohen v. Cohen*, 82 N.Y.S.2d 513, 193 Misc. 106.—*Child S 55, 149*.

N.Y.Sup. 1942. An examination by deposition before commencement of action for the purpose of identifying prospective defendants is "necessary" within the meaning of the statute permitting an examination before commencement of action only where necessary to protect a prospective party's rights, but an examination for the purpose of obtaining information to draw a complaint is not necessary within the meaning of the statute, particularly where an examination for the purpose of identifying prospective defendants would enable prospective plaintiff to draw a complaint on information and belief. Civil Practice Act, §§ 288, 295, 296; Rules of Civil Practice, rules 122, 123.—*Application of Cohen*, 37 N.Y.S.2d 115, 179 Misc. 6, affirmed 38 N.Y.S.2d 925, 265 A.D. 1029.—*Pretrial Proc 93, 181*.

N.Y.Sup. 1939. The term "necessary" as used in statute regarding examination of adverse party before trial does not mean "indispensable" or "absolutely necessary" but is used in the sense of "need-

ful." Civil Practice Act, § 288.—*Parsons v. Moss*, 13 N.Y.S.2d 865, 171 Misc. 828.—*Pretrial Proc* 91.

N.Y.Sup. 1933. Services of wife's attorneys in defending husband's habeas corpus proceeding to obtain custody of child held "necessaries" for which husband was liable. Since it was husband who left wife and thereafter sought to take from her their infant child, he was in no position to urge that services of wife's attorneys in defending habeas corpus proceeding were aimed at disruption of his home and family and were therefore not necessities. Generally, whatever naturally and reasonably tends to relieve distress or materially and in some essential particular to promote comfort, either of body or mind, may be deemed to be a "necessary," for which wife under proper circumstances may pledge husband's credit.—*McLaughlin v. McCanliss*, 262 N.Y.S. 529, 146 Misc. 518, affirmed 268 N.Y.S. 912, 240 A.D. 964.

N.Y.Sup. 1931. That freight depots, at convenient localities, are "necessary," within statute to the operation of the petitioners' road, is undeniable. The company, therefore, "requires" real estate for that purpose. To say that it can get along with a lease is to say what is equally true respecting every foot of land over which it runs its cars, but to claim that therefore the fee is not "required" is to apply a hypercritical meaning to that term, which ought not to prevail against a corporation created for the convenience of the public, and is contrary to the plain intent of the statutes on these subjects, which make no provision to enable companies to compel lease, but always provide for the acquisition of the land itself.—*Kip v. New York Cent. R. Co.*, 250 N.Y.S. 5, 140 Misc. 62, affirmed 257 N.Y.S. 919, 236 A.D. 654, affirmed 184 N.E. 148, 260 N.Y. 692, reargument denied 185 N.E. 735, 261 N.Y. 554, certiorari denied 54 S.Ct. 53, 290 U.S. 636, 78 L.Ed. 553.

N.Y.Sup. 1916. Where the Rapid Transit Act of 1875 did not expressly authorize additions to original elevated structure erected by plaintiff's predecessors and the public could use original structures, additions held not legal as incidental to franchise because "necessary."—*Interborough Rapid Transit Co. v. City of New York*, 161 N.Y.S. 803, 97 Misc. 499.—*Urb R R* 7.1.

N.Y.Sup. 1904. Where a motion is made for the appointment of a referee to take depositions of the officers of a corporation, and affidavits in opposition to such application, made by the persons whose depositions are sought, show that they would not swear to the facts as alleged by the moving party, and are in ignorance as to such facts, the motion will be denied, under Code Civ.Proc. § 885, making it a prerequisite to the granting of an order that the affidavit for deposition show that it is "necessary" for use on the motion.—*Calvet-Rogniat v. Mercantile Trust Co.*, 93 N.Y.S. 241, 46 Misc. 20.—*Depositions* 36.

N.Y.Sup.App.Term 1921. Where defendant infant, taking out a life insurance policy, requested plaintiff to pay the premium for her, and gave her note to plaintiff therefor, she is liable on such note;

the policy being treated as a "necessary."—*W.R. Collins & Co. v. Wacker*, 188 N.Y.S. 71.—*Infants* 50.

N.Y.Sup.App.Term 1903. The word "taxable," as applied to costs and disbursements, is sufficiently synonymous with the word "necessary," so that the use of one in place of the other in an order does not change the meaning; either word relating, not to the allowance of disbursements, but wholly to the quality or character of the items.—*Wilson v. Lange*, 84 N.Y.S. 519.

N.Y.Sur. 1955. Under will devising residue of estate to husband for life with right to use principal if same was "necessary" for his maintenance, husband was to have income from estate of deceased for such needs and purposes as would maintain him in his normal standard of living and if such income was insufficient then his personal means must be used before invading principal for such need and requirements.—*In re Houghtaling's Estate*, 143 N.Y.S.2d 87, 208 Misc. 129.—*Wills* 616(1).

N.Y.Sur. 1950. "Necessary" is defined to mean, such as must be, impossible to be otherwise, not to be avoided, or inevitable.—*In re Eppig's Will*, 101 N.Y.S.2d 706.

N.Y.Sur. 1941. Under will creating a trust of residue of the estate with directions to trustee to apply the "entire net income interest or profit therefrom and, in addition thereto, whatever portion of the principal thereof may be necessary, for the proper maintenance and support" of testator's wife, the gift of principal is as broad as the gift of income and "necessary" was used not as limiting the right of principal invasion to those instances wherein the beneficiary could not be properly maintained and supported by both the trust income and her own independent sources, but as limiting the amount thereof.—*In re Birdsall's Estate*, 28 N.Y.S.2d 23, 176 Misc. 619.—*Wills* 684.2(5).

N.Y.Sur. 1937. Housing is a "necessary" for which husband is primarily liable.—*In re Wickings' Estate*, 294 N.Y.S. 598, 162 Misc. 357.—*Hus & W* 19(14).

N.Y.Co.Ct. 1946. The repair of an automobile owned by an infant is not a "necessary" and infant is not liable on contract for repairs.—*Pulcher v. Qualtiere*, 61 N.Y.S.2d 582, 187 Misc. 727.—*Infants* 50.

N.Y.Mun.Ct. 1938. Defendant in action for accidental death benefits under life insurance policies is entitled to appointment of referee to take depositions of medical examiner, detective and others, apparently having knowledge of facts and circumstances surrounding insured's death, as against objection that such depositions were not shown to be "necessary," as word "necessary" in statute does not mean absolutely essential. Civil Practice Act, § 307.—*McQuade v. Prudential Ins. Co. of America*, 2 N.Y.S.2d 647, 166 Misc. 524.—*Pretrial Proc* 64.

N.Y.Mun.Ct. 1935. Apartment occupied by incompetent, his wife, and family, which was the only home supplied for the incompetent, held a "neces-

sary," so that incompetent's estate was liable for agreed rent which was fair and reasonable in amount.—*Jerome Realty Co. v. Willis*, 282 N.Y.S. 184, 156 Misc. 581, reversed 289 N.Y.S. 648, 160 Misc. 164.—*Mental H 241*.

N.Y.Mun.Ct. 1934. Attorneys' services in proceeding in family court wherein order was obtained requiring husband who was earning \$400 per month to pay \$34 per week for support of wife and two children held "necessary," and wife could make charge of \$100 therefor against husband's credit, since proceeding was not criminal, but one of civil nature. *Laws 1933, c. 482, § 138*.—*Rothstein v. Erickson*, 276 N.Y.S. 539, 153 Misc. 647.—*Hus & W 19(18)*.

N.Y.Mun.Ct. 1934. Deposition of person not a party is "necessary" for use on motion justifying appointment of referee to take deposition of such person where he has knowledge of relevant facts and refuses to make affidavit concerning them, since "necessary" as used in Civil Practice Act and rule providing for such depositions means "needful," not "indispensable" or "absolutely necessary". Civil Practice Act, § 307; Rules of Civil Practice, rule 120.—*Reiss v. Ballard Realty & Mortgage Corp.*, 269 N.Y.S. 631, 150 Misc. 34.—*Pretrial Proc 64*.

N.Y.Ct.Cl. 1957. The word "necessary" within section of Civil Practice Act requiring that proposed examination of a party, an original owner of the claim, or of any other person shall be material and necessary in prosecution or defense of action in which deposition is sought, means needful and not indispensable. Civil Practice Act, § 288.—*Andrews v. State*, 172 N.Y.S.2d 703, 10 Misc.2d 501.—*Pretrial Proc 173*.

N.Y.Ct.Cl. 1940. On claimant's motion for order of Court of Claims permitting examination of state before trial, where subjects upon which claimant sought examination and inspection and discovery were apparently material and necessary in prosecution of claim against the state, burden of proving that information sought was not material and "necessary" was on the state, the quoted term meaning needful and not indispensable or absolutely necessary. Court of Claims Act, § 17, subd. 2.—*Dunbar & Sullivan Dredging Co. v. State*, 21 N.Y.S.2d 937, 174 Misc. 743.—*Pretrial Proc 128*.

N.Y.City Civ.Ct. 1965. \$150 allegedly expended by wife for legal services in criminal court proceeding involving return of clothing from husband was not recoverable from husband in plenary action as a "necessary".—*Levine v. Levine*, 263 N.Y.S.2d 997, 48 Misc.2d 15, affirmed 269 N.Y.S.2d 243, 50 Misc.2d 39.—*Hus & W 19(18)*.

N.Y.City Ct. 1937. Test of court's power to direct examination before trial, under statute, is that testimony is both material and necessary, and plaintiff may not examine defendant as to conversation in which both participated, even though testimony may be material, since plaintiff himself could disclose all that is material, and testimony is not "necessary". *Laws 1907, c. 755, § 514*, as added by

Laws 1926, c. 276, § 2.—*Ralph v. Schicker*, 295 N.Y.S. 497, 162 Misc. 380.—*Pretrial Proc 93*.

N.Y.Fam.Ct. 1983. Factors which are "material" and "necessary" to determination of fair and reasonable sum for support of child born out-of-wedlock are those outlined in provision which applies to support for children born in wedlock, as factors are applicable in all Uniform Support of Dependent Laws proceedings. McKinney's Family Court Act §§ 413, 545; McKinney's DRL § 32, subd. 3; McKinney's CPLR 3101(a).—*E.M. v. G.S.*, 470 N.Y.S.2d 77, 122 Misc.2d 177.—*Child 67*.

N.C. 1942. The mandate of constitutional provisions relating to public education carries with it not merely the bare necessity of instructional service, but all facilities reasonably necessary to accomplish main purpose; the word "necessary" being regarded as a relative and not an exigent term. Const. art. 9, §§ 2, 3.—*Bridges v. City of Charlotte*, 20 S.E.2d 825, 221 N.C. 472.—*Schools 11*.

N.C. 1942. Where there was evidence that ownership of an automobile was advantageous to minor and that he would not have been promoted in his work without an automobile available for his use, but it did not appear that an automobile was necessary for him to earn a livelihood, automobile bought by minor was not a "necessary", for which minor could be held liable.—*Barger v. M. & J. Finance Corp.*, 18 S.E.2d 826, 221 N.C. 64.—*Infants 50*.

N.C. 1936. In connection with Const. art. 7, § 7, prohibiting municipal corporations from levying taxes without the voters' approval, except for necessary expenses, the word "necessary" is defined as a thing that is necessary or indispensable to some purpose; something that one cannot do without; a requisite; an essential.—*Atkins v. City of Durham*, 186 S.E. 330, 210 N.C. 295.

N.C. 1889. Whether a cooking stove is a "necessary" within the meaning of Code, § 1826, which provides that no married woman, not a free trader, may make a contract to affect her property except for necessary personal expenses, or the support of her family, without the written consent of her husband, is a question of fact for the jury.—*Berry v. Henderson*, 9 S.E. 455, 102 N.C. 525.—*Hus & W 19(14)*.

N.C.App. 1969. Services of a professional employment agency were not a "necessary" expense so as to obligate infant to pay for them, and it made no difference that infant had profited by efforts of the agency; he was still free to disaffirm the contract where, while he was clearly in need of a job when such services were rendered, it did not appear that they were necessary for him to earn a livelihood.—*Gastonia Personnel Corp. v. Rogers*, 168 S.E.2d 31, 5 N.C.App. 219, reversed 172 S.E.2d 19, 276 N.C. 279, 41 A.L.R.3d 1062.—*Infants 50, 58(1)*.

N.D. 1998. Easement by implication does not arise merely because its use is convenient to beneficial enjoyment of dominant portion of property; "necessary" means that there can be no other reasonable mode of enjoying dominant tenement

without easement.—*Griffeth v. Eid*, 573 N.W.2d 829, 1998 ND 38.—Ease 15.1.

Ohio App. 2 Dist. 1953. In determining whether an article is a “necessary”, within statute pertaining to sale of necessities to infants, court must consider whether the article is suitable to the condition in life of the infant and whether the article is actually required at time of delivery thereof. Gen.Code, § 8382.—*Ballinger v. Craig*, 121 N.E.2d 66, 95 Ohio App. 545, 54 O.O. 144.—Infants 50.

Ohio App. 2 Dist. 1953. Lodging is a “necessary” for which an infant may be bound, and what particular kind of lodging is necessary is a question of fact. Gen.Code, § 8382.—*Ballinger v. Craig*, 121 N.E.2d 66, 95 Ohio App. 545, 54 O.O. 144.—Infants 50, 102.

Ohio App. 2 Dist. 1953. Where husband and wife, both 19 years of age and both employed, were being furnished lodging by parents of the husband at time they contracted to purchase a house trailer, the trailer was not a “necessary”, within the statute providing that when necessities are sold and delivered to an infant, he must pay a reasonable price therefor. Gen.Code, § 8382.—*Ballinger v. Craig*, 121 N.E.2d 66, 95 Ohio App. 545, 54 O.O. 144.—Infants 50.

Ohio App. 2 Dist. 1950. Automobile purchased by minor who executed cognovit note as part consideration therefor, which was not essential to bodily or mental needs of minor and not for business purposes, but was used merely by minor to go to and from place of employment, was not a “necessary” for which minor was liable and which would defeat indorsee’s right of action against payee under warranty of capacity of maker to contract. Gen.Code, § 8170.—*First Discount Corp. v. Hatcher Auto Sales*, 104 N.E.2d 587, 90 Ohio App. 553, 48 O.O. 201, 61 Ohio Law Abs. 366, affirmed 102 N.E.2d 4, 156 Ohio St. 191, 46 O.O. 87.—Bills & N 296; Infants 50.

Ohio App. 6 Dist. 1954. The word “necessary” as used in provisions of the Turnpike Act giving the Turnpike Commission power to acquire by condemnation such public or private lands, or parts thereof or rights therein, rights of way, property, rights, easements, and interests as it deems “necessary” for carrying out the provisions of the Act and to do all acts and things “necessary” or proper to carry out the powers expressly granted in the Act, does not mean “absolutely necessary” or “indispensable”, but means “reasonably necessary to secure the end in view.” R.C. § 5537.04(I, O).—*Solether v. Ohio Turnpike Commission*, 133 N.E.2d 148, 99 Ohio App. 228, 58 O.O. 398, affirmed in part, reversed in part *Ellis v. Ohio Turnpike Commission*, 120 N.E.2d 719, 162 Ohio St. 86, 54 O.O. 27.—Em Dom 56.

Ohio App. 6 Dist. 1943. An automobile purchased by a minor to go to and from his work and which was not essential for his bodily or mental needs was not a “necessary”, and minor was entitled to rescind contract of purchase after using the automobile and recover purchase price.—*Chambers*

v. Dunmyer Chevrolet Co., 58 N.E.2d 239, 74 Ohio App. 235, 29 O.O. 362.—Infants 50.

Ohio App. 9 Dist. 1955. Power of life tenant under will to use so much of corpus as might be “necessary” to care for herself both in health and in sickness so long as she might live was to be given liberal construction as to word “necessary”, but, notwithstanding such liberal construction, question of whether it was necessary to sell corpus of estate was factual matter to be established by proper evidence.—*Kern v. Kern*, 136 N.E.2d 675, 100 Ohio App. 327, 60 O.O. 285.—Wills 692(2).

Ohio Com.Pl. 1974. Within statute permitting local regulation restricting construction, location or use of public utility facility unless facility is necessary for service, etc., unless facility is to be constructed in accordance with generally accepted safety standards and does not unreasonably affect welfare of general public, words “necessary” and “unreasonably” must be read in relation to proposed route. R.C. § 4905.65(B)(1, 3).—*Cleveland Elec. Illuminating Co. v. Scapell*, 324 N.E.2d 610, 41 Ohio Misc. 107, 66 O.O.2d 262, 70 O.O.2d 231, affirmed 336 N.E.2d 637, 44 Ohio App.2d 13, 73 O.O.2d 9.—Mun Corp 618.

Ohio Com.Pl. 1973. Word “necessary” within statute authorizing board of education to make such rules and regulations as are necessary for its government and the government of its employees, pupils and persons entering upon school grounds and premises implies necessary to carry out purposes of general public education. R.C. § 3313.20.—*Jacobs v. Benedict*, 301 N.E.2d 723, 35 Ohio Misc. 92, 64 O.O.2d 355, affirmed 316 N.E.2d 898, 39 Ohio App.2d 141, 68 O.O.2d 343.—Schools 55, 171.

Ohio Juv. 1959. Whether a college education is a “necessary” within the contemplation of the law making a father liable to furnish his children with necessities until they attain the age of 21 is a relative matter and a college education is a “necessary” where the minor’s ability and prospects justify it. R.C. §§ 2151.38, 3103.02, 3103.03, 3109.01.—*Calogeras v. Calogeras*, 163 N.E.2d 713, 10 O.O.2d 441, 82 Ohio Law Abs. 438.—Child S 119.

Okl. 2002. Determination of what is “necessary” to operate a state agency, so as to give rise to implied powers on part of agency, does not depend on what has customarily been performed.—*Oklahoma Public Employees Ass’n v. Oklahoma Dept. of Central Services*, 55 P.3d 1072, 2002 OK 71.—Admin Law 325.

Okl. 1980. Legal services rendered in opposing guardian’s account, in proceeding involving an annual accounting of incompetent ward’s estate and an attempt to restore him to competency, were not “necessary” within meaning of statute providing that person entirely without understanding had no power to make contract but was liable for reasonable value of things furnished to him and necessary to his support, and, thus, ward’s estate was not obligated to pay fee for such services, though ward attempted to contract to pay for the services. 15 O.S.1971, §§ 20, 22, 24; 58 O.S.1971, § 854.—

Matter of Bradshaw's Estate, 606 P.2d 578, 1980 OK 17.—Mental H 375.

Okla. 1961. Sounding horn to warn pedestrian is "necessary" within statute, where pedestrian is in plain view or obviously apparent, or motorist in exercise of due care would see pedestrian under like or similar circumstances and be cognizant of his presence and utilize such information to prevent injury to him. 47 O.S.Supp. § 125.14.—Roberts v. Cain, 365 P.2d 1014, 1961 OK 231.—Autos 160(3).

Okla. 1943. Funeral expense is a "necessary" within statute authorizing third persons to recover from parent for necessities furnished child. 10 Okl.St. Ann. § 13.—Phillips v. Home Undertakers, 138 P.2d 550, 192 Okla. 597, 1943 OK 231.—Child S 100.

Okla. 1939. In view of the broad statutory powers and discretion of a board of education of an independent district, to maintain a suitable school system, and to incur "necessary" expenses to carry out and fulfill the powers and purposes contemplated by the statutes, an appropriation by such district for the purchase of band uniforms for use in band music department of its high school was authorized. 70 Okl.St. Ann. § 189.—Excise Board of Kay County v. Atchison, T. & S. F. R. Co., 91 P.2d 1087, 185 Okla. 327, 1939 OK 295.

Okla. 1915. An attorney's fee for services rendered for a minor in relation to his property without intervention of a guardian, not being a "necessary" within Rev.Laws 1910, § 886, 15 Okl.St. Ann. § 20, providing when a minor's contract may not be disaffirmed, was not recoverable.—Marx v. Hefner, 149 P. 207, 46 Okla. 453, Am. Ann. Cas. 1917B, 656, 1915 OK 335.—Infants 50.

Okla. 1915. Where a petition, based on a foreign contract, against a minor for legal services, sought to recover on an express contract, or on a quantum meruit, and did not plead the *lex loci contractus*, showing that the services were "necessary," held, that it did not state a cause of action.—Marx v. Hefner, 149 P. 207, 46 Okla. 453, Am. Ann. Cas. 1917B, 656, 1915 OK 335.—Infants 92.

Okla. Terr. 1900. St. 1893, § 1785, subd. 5, 19 Okl.St. Ann. § 339, subd. 4, gives the power to boards of county commissioners to furnish necessary blank books, plates, blanks, and stationery for clerks of district courts; and all books and stationery which tend to expedite or facilitate business in such courts are included in the term "necessary," under this provision of the statute.—Board of Com'rs of Garfield County v. Isenberg, 61 P. 1067, 10 Okla. 378, 1900 OK 57.—Counties 113(4).

Or. 1983. Term "necessary," as contained in statute providing, *inter alia*, that Department of Revenue may subpoena and examine witnesses, administer oaths and order production of any books or papers whenever necessary in prosecution of any inquiries deemed necessary and proper in their official capacity, means relevant to purposes of lawful investigation and object of demonstrable, practical need, and therefore subpoena power is not limited to instances of what amount to compelling

need for information. ORS 305.190(1).—State ex rel. Dept. of Revenue v. Capital Shelters, Inc., 668 P.2d 1214, 295 Or. 561.—Tax 336(3).

Or. 1976. In suit in which plaintiffs were determined to have obtained title to strip of land by virtue of adverse possession, items which consisted of photographs and photographic services, of the surveying and preparing of a legal description of strip and of a title search to discover other potential claimants to strip, were not "necessary" within meaning of statute providing that a party entitled to costs shall also be allowed all necessary disbursements. ORS 20.020.—Overton v. Blake, 544 P.2d 1037, 274 Or. 91.—Costs 178, 180.

Or. 1959. Under constitutional provision declaring that use of all roads and ways necessary to provide transportation of raw products of mine, farm or forest is necessary for development and public welfare of State, and is declared a public use, and under statute implementing such constitutional provision word "necessary" means reasonably necessary and requires consideration of all pertinent factors such as existence of alternate route, and whether alternate route is suitable and will enable products to reach market without unreasonable delay, expense, effort and hazard. Const. art. 1, § 18; ORS 376.510.—Moore Mill & Lumber Co. v. Foster, 336 P.2d 39, 216 Or. 204, rehearing denied 337 P.2d 810, 216 Or. 204.—Em Dom 19.

Or. 1949. Third persons to whom, according to the evidence, defendants had conveyed realty before suit for specific performance of contract to sell such realty to plaintiffs was commenced and who were in possession of the realty were "necessary" and "indispensable parties" to suit for specific performance. ORS 13.110.—Cottrell v. Prier, 212 P.2d 87, 187 Or. 454.—Parties 30; Spec Perf 106(1).

Or. 1947. Litigation is "necessary" within meaning of statute providing for allowance to executor or administrator of attorney's fees in "necessary" litigation if such litigation is reasonable, useful, and proper. ORS 117.660.—In re Feehelly's Estate, 187 P.2d 156, 182 Or. 246, 173 A.L.R. 1334.—Ex & Ad 111(1).

Or. 1947. Executor was entitled to allowance of attorney's fees for services rendered in probate court and on appeal from order of probate court vacating its previous order directing sale of realty to pay claims against estate and costs of administration, involving question of whether rents derived during administration from realty devised in trust could be used for such purposes, since such appeal, though unsuccessful, was "necessary" within meaning of statute relating to allowance of attorney's fees. ORS 117.660.—In re Feehelly's Estate, 187 P.2d 156, 182 Or. 246, 173 A.L.R. 1334.—Atty & C 130; Ex & Ad 111(8).

Or. 1916. Under L.O.L. § 227, as amended by Laws 1915, p. 27, ORS 23.160, 23.170, 23.220, exempting from execution the team, vehicle, harness, etc., necessary to the occupation by which the debtor habitually earns his living, the word "necessary" signifies reasonably necessary or suitable, and does not mean indispensable or absolutely neces-

sary, and the word "occupation" includes any employment in which a person is engaged to secure a living.—*Childers v. Brown*, 158 P. 166, 81 Or. 1.—Exempt 44.

Or. 1916. Under L.O.L. § 227, as amended by Laws 1915, p. 27, making the team, vehicle, harness, etc., necessary to enable any person to carry on the trade, occupation, or profession by which he habitually earns his living exempt from execution, the term "necessary" signifies "reasonably necessary" or "convenient" or "suitable," and does not mean "indispensable" or "absolutely necessary."—*Childers v. Brown*, 158 P. 166, 81 Or. 1.

Or.App. 1996. Native American victims of automobile accident occurring on Warm Springs Reservation, over whom circuit court lacked long-arm jurisdiction and who thus could not be joined, were "necessary" parties, as claimants against policy, to insurance company's declaratory judgment action to determine whether driver was covered by liability policy issued off reservation to his grandparents, requiring dismissal of action for jurisdictional defect. ORS 28.110; Rules Civ.Proc., Rule 4.—*North Pacific Ins. Co. v. Switzler*, 924 P.2d 839, 143 Or.App. 223.—Decl Judgm 295, 363.

Or.App. 1989. Relief is "necessary," for purposes of statute allowing further relief based on declaratory judgment or decree whenever necessary or proper, when it is required in order to enforce judgment because of failure of one party to comply. ORS 28.080.—*Samuel v. Frohnmayer*, 770 P.2d 914, 95 Or.App. 561, review allowed 775 P.2d 1382, 308 Or. 142, reversed 779 P.2d 1028, 308 Or. 362.—Decl Judgm 62.

Or.App. 1983. Fish and Wildlife Commission did not abuse its discretion in interpreting word "necessary" in statute governing permits to use explosives or any substance deleterious to fish in state waters as meaning reasonably necessary rather than indispensable. ORS 509.140(2).—*Oregon Shores Conservation Coalition v. Oregon Fish and Wildlife Com'n*, 662 P.2d 356, 62 Or.App. 481, review denied 668 P.2d 381, 295 Or. 259.—*Environ Law* 531.

Pa. 1942. Under trust authorizing monthly payments to widow for life and additional payments to widow out of principal, on her request, in amounts deemed "advisable" and "necessary" by trustee, and providing that broad discretionary powers should be vested in trustee, and that trust should be liberally interpreted in beneficiary's favor, formal request by widow was not indispensable prerequisite to making of additional payments to widow, and trustee could pay taxes and insurance on widow's individual estate and widow's hospital and medical expenses after widow allegedly became insane without widow's formal request.—*In re Greenwald's Estate*, 26 A.2d 918, 345 Pa. 119.—*Trusts* 280.

Pa. 1942. A trustee's payment of taxes and insurance on widow's individual estate and widow's hospital and medical expenses after widow allegedly became insane was "advisable" and "necessary", and therefore not the basis for a surcharge, under

trust authorizing monthly payments to widow for life and additional payments to widow out of principal in amounts deemed "advisable" and "necessary" by trustee.—*In re Greenwald's Estate*, 26 A.2d 918, 345 Pa. 119.—*Trusts* 280.

Pa. 1941. The word "necessary" in statute exempting from city and school taxes all churches with ground thereto annexed necessary for occupancy and enjoyment thereof does not import an absolute necessity and is not so broad as to comprehend that which is merely desirable, and means a reasonable necessity, and contemplates among other matters the inclusion of sufficient ground for entrance and exit and for light and air. 72 P.S. § 5020-204.—*First Baptist Church of Pittsburgh v. City of Pittsburgh*, 20 A.2d 209, 341 Pa. 568, 134 A.L.R. 1169.—*Mun Corp* 967(1); *Schools* 102.

Pa. 1939. The words "shall" and "necessary" in statute providing that each school board shall employ the necessary qualified teachers to keep public schools open are mandatory, and the word "necessary" must be given its plain meaning and should not be construed to mean "unnecessary." 24 P.S. § 1121.—*Ehret v. School Dist. of Borough of Kulpmont*, 5 A.2d 188, 333 Pa. 518.—*Schools* 133.

Pa. 1939. What is "necessary" within statute providing that each school board shall employ the necessary qualified teachers to keep public schools open is a matter within administrative discretion of school board. 24 P.S. § 1121.—*Ehret v. School Dist. of Borough of Kulpmont*, 5 A.2d 188, 333 Pa. 518.—*Schools* 133.

Pa. 1939. Under provision in School Code requiring school board to employ "necessary" teachers, a teacher in a department abolished for valid reasons, including financial ones, in the interest of a more efficient system, can be dismissed by school board without consideration of seniority, notwithstanding that abandonment is not within causes for dismissal contained in Teachers' Tenure Act. 24 P.S. §§ 1121, 1126(a, b).—*Ehret v. School Dist. of Borough of Kulpmont*, 5 A.2d 188, 333 Pa. 518.—*Schools* 147.10.

Pa. 1906. The word "necessary," as used in an agreement permitting the construction of a switch necessary for the accommodation of a railway company, does not mean absolutely requisite, but is equivalent to the words "reasonably convenient."—*Reeser v. Philadelphia & R. Ry. Co.*, 64 A. 376, 215 Pa. 136.

Pa.Super. 1965. Under statute exempting from real estate tax certain seminaries and institutions of learning with grounds thereto annexed and "necessary" for occupancy and enjoyment of the same, word "necessary" means not absolute necessity, but rather reasonable necessity, embracing the idea of convenience and usefulness for purposes intended.—*Appeal of Lancaster Theological Seminary of United Church of Christ*, 214 A.2d 285, 207 Pa.Super. 12.—*Tax* 242(1).

Pa.Super. 1959. Under statute exempting from taxation all churches with ground thereto annexed "necessary" for occupancy and enjoyment of the

same, quoted word does not impart an absolute necessity, but rather a reasonable necessity, convenient and useful to the purpose. 72 P.S. § 5020-204.—Second Church of Christ Scientist of Philadelphia v. City of Philadelphia, 151 A.2d 860, 189 Pa.Super. 579, reversed 157 A.2d 54, 398 Pa. 65, 75 A.L.R.2d 1103.—Tax 244.

Pa.Super. 1958. In action by corporation against husband and wife to recover purchase price of mink coat sold by corporation to wife, coat, though mink, was properly classified as a "necessary" for which husband would be liable, by the jury, where husband was president of a family owned corporation, and there was evidence that he received \$15,000 annually from another corporation.—Gimbel Bros., Inc. v. Pinto, 145 A.2d 865, 188 Pa.Super. 72.—Hus & W 19(14).

Pa.Super. 1933. Word "necessary" in statute exempting annexed grounds, necessary for occupancy and enjoyment of charitable institutions, from taxation, does not mean absolute necessity, but reasonable necessity, convenient and useful to charitable purpose. 72 P.S. § 4701.—United Presbyterian Women's Ass'n of North America v. Butler County, 167 A. 389, 110 Pa.Super. 116.—Tax 241.1(1).

Pa.Cmwth. 1979. A "necessary" party is one whose presence, while not indispensable, is essential if court is to completely resolve controversy before it and render complete relief.—Action Coalition of Elders v. Allegheny County Institution Dist., 403 A.2d 1357, 44 Pa.Cmwth. 356, vacated 426 A.2d 560, 493 Pa. 302.—Parties 18, 29.

R.I. 1972. Automobile used by minor for pleasure and for commuting to work was not "necessary" and minor would be entitled to disaffirm contract for purchase of the automobile.—Warwick Municipal Employees Credit Union v. McAllister, 293 A.2d 516, 110 R.I. 399.—Infants 50, 58(1).

R.I. 1901. "Necessary," as used in a statute authorizing an electric railway company to condemn land necessary for its corporate purposes, does not mean an absolute necessity in the sense that the particular land is indispensable, but rather that the land, or other similarly situated, is reasonably required for a public purpose.—In re Rhode Island Suburban Ry. Co., 48 A. 591, 22 R.I. 457, 52 L.R.A. 879.

S.C. 1980. Term "necessary" within major medical expense policy, which excluded coverage for anything not ordered by doctor or not necessary for medical care of illness, was to be construed as meaning "appropriate."—Abernathy v. Prudential Ins. Co. of America, 264 S.E.2d 836, 274 S.C. 388.—Insurance 2481.

S.C. 1977. Minor or his estate may be bound on an implied contract where necessary, and medical treatment is considered a "necessary," but a minor or his estate cannot be held liable for the cost of necessities unless his parents are unable to discharge their obligation of support.—Greenville Hospital System v. Smith, 239 S.E.2d 657, 269 S.C. 653.—Infants 50.

S.D. 1956. Under statute providing that, when Board of Regents deems dormitory and apartment housing necessary and "feasible" at educational institution under Board's control, Board may construct such buildings and issue revenue bonds, whether structure is "necessary" depends on relationship of firm student population at particular institution to available acceptable housing in existing dormitories and in the community, and "feasibility" of structure depends on whether revenue it will produce at rates student can and should pay will be sufficient to induce investors to supply capital to bring it into being. Laws 1955, c. 49.—Boe v. Foss, 77 N.W.2d 1, 76 S.D. 295.—Colleges 6(1).

Tenn. 1975. Situation of infant who, though living with mother, received support from government rather than from mother's efforts, and whose mother had been concededly unable to provide hospital care needed by infant, was that contemplated by exception to general rule that infant has no capacity to make contract, viz., infant was destitute of necessary articles and had no way of procuring them except by its own contract; thus, such hospital case was a "necessary" for which child was liable, and reasonable value thereof could be recovered by hospital from fund created by settlement with alleged tort-feasor.—Gardner v. Flowers, 529 S.W.2d 708.—Infants 50.

Tenn. 1942. Where night watchman was employed by an employer which engaged in both intrastate and interstate business, to care for all of employer's property each night, the watchman was an employee engaged in an occupation "necessary" to production of goods in "commerce" within Fair Labor Standards Act, notwithstanding that more frequent nightly inspections were made at retail establishments at which employer engaged in intrastate business than were made of wholesale houses which involved interstate business. Fair Labor Standards Act, § 1 et seq., 29 U.S.C.A. § 201 et seq.—Johnson v. Phillips-Buttorff Mfg. Co., 160 S.W.2d 893, 178 Tenn. 559, certiorari denied 63 S.Ct. 43, 317 U.S. 648, 87 L.Ed. 521.—Commerce 60(1), 62.63.

Tenn.Crim.App. 1980. Twenty-six-month delay between indictment and criminal trial could not be said to be "necessary," so as perhaps to excuse delay, in view of fact that it was product of human error on part of corrections officials which, reasonably speaking, was not unavoidable. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 9; Rules Crim. Proc., Rule 48(b).—State v. Wallace, 648 S.W.2d 264.—Crim Law 577.12(1).

Tenn.Ct.App. 1941. The word "necessary," in Fair Labor Standards Act providing that an employee shall be deemed to have been engaged in the production of goods if such employee was employed in any occupation necessary to the production thereof, does not mean "indispensable," but means "essential" and "beneficial." Fair Labor Standards Act of 1938, § 3, 29 U.S.C.A. § 203.—S.H. Robinson & Co. v. Larue, 156 S.W.2d 359, 25 Tenn.App. 284, affirmed 156 S.W.2d 432, 178 Tenn. 197.—Commerce 62.47, 62.62.

Tenn.Ct.App. 1941. Where employer operated a junkyard wherein junk was deposited and graded in preparation for reshipment, some of the shipments being interstate and some intrastate, employer's business was "interstate", and a night watchman whose duties were to guard yards and buildings was engaged in an occupation "necessary" to the production thereof, so as to be entitled to benefit of Fair Labor Standards Act. Fair Labor Standards Act of 1938, §§ 1 et seq., 3, 29 U.S.C.A. §§ 201 et seq., 203.—S.H. Robinson & Co. v. Larue, 156 S.W.2d 359, 25 Tenn.App. 284, affirmed 156 S.W.2d 432, 178 Tenn. 197.—Commerce 62.63.

Tex. 1942. "Necessary parties" to a suit are such persons as have or claim a direct interest in the object and subject-matter of the suit, and whose interest will necessarily be affected by any judgment that may be rendered therein, and such persons were not only "proper parties" but are "necessary" and "indispensable parties".—Veal v. Thomason, 159 S.W.2d 472, 138 Tex. 341.—Parties 18, 32.

Tex.Com.App. 1942. Provision of deed whereby grantee of a portion of lot was granted a right of way easement over driveway on land retained by grantors reciting that easement should continue as long as "necessary" and required for ingress and egress to and from garages at rear of conveyed land after which it should cease, while not sufficiently specific to enable court to determine as a matter of law by a construction thereof what future contingency parties intended should terminate the easement, was not so meaningless as to be disregarded resulting in construction that an absolute grant of a perpetual easement was made.—Scott v. Walden, 165 S.W.2d 449, 140 Tex. 31, 154 A.L.R. 1.—Ease 44(1).

Tex.App.—Dallas 1982. Words "unreasonably" and "necessary" in statute defining offense of cruelty to animals are to be understood according to their common meanings in the context in which they are employed. V.T.C.A., Penal Code § 42.11(a)(2).—Cross v. State, 646 S.W.2d 514, petition for discretionary review refused.—Anim 40.

Tex.Civ.App.—Fort Worth 1946. The fee allowed wife's attorney in divorce action must be reasonable, but trial court, in such a case, may within its discretion determine whether fee to be allowed is a "necessary" for which husband can be held liable under statute and likewise determine the amount. Rev.St.1925, arts. 4620, 4621, 4623.—Moore v. Moore, 192 S.W.2d 929.—Divorce 223.

Tex.Civ.App.—Fort Worth 1946. In action for divorce and division of property, trial court did not abuse its discretion in treating fee for wife's attorney as a "necessary" for protection of wife's property rights and taxing against husband only one-half of amount found to be a reasonable fee, which had practical effect of taxing whole fee against husband to be paid out of community funds. Rev.St.1925, arts. 4620 et seq., 4638.—Moore v. Moore, 192 S.W.2d 929.—Divorce 223.

Tex.Civ.App.—Fort Worth 1941. Under contract to drill well to specified depth with eight-inch cas-

ing, "unless excess water is encountered, making it necessary to set extra string of casing other than the eight-inch", in which event owner of oil lease would bear expense of additional casing, parties must have contemplated contingency requiring smaller casing, and hence necessity for smaller casing was properly submitted to jury, though driller might have dispensed with smaller casing by employing expensive underreaming process, as against contention that as a matter of law smaller casing was not "necessary".—Carter v. Myers, 149 S.W.2d 248.—Mines 109.

Tex.Civ.App.—Fort Worth 1931. In action against husband, instruction that, in determining whether fur coat purchased by wife was a "necessary," "necessary does not include luxuries, ****" held incorrect.—Neiman-Marcus Co. v. Trigg, 36 S.W.2d 1073.—Hus & W 19(14).

Tex.Civ.App.—Fort Worth 1931. In action against husband, instruction that, in determining whether fur coat purchased by wife was a "necessary," "necessary does not include luxuries, * * * " held erroneous as in nature of general charge and on weight of evidence.—Neiman-Marcus Co. v. Trigg, 36 S.W.2d 1073.—Trial 194(13).

Tex.Civ.App.—Austin 1934. Statute empowering Railroad Commission to investigate petroleum industry, and authorizing Commission to require certain reports, make inspections, and examine records whenever "necessary," held valid as vesting things authorized in Commission's "administrative discretion," which must be reasonably exercised, since "necessary," as used in statute, means "reasonable." Vernon's Ann.Civ.St. art. 6049c, § 5; U.S.C.A. Const.Amend. 4; Vernon's Ann.St. Const. art. 1, § 9.—Culver v. Smith, 74 S.W.2d 754, writ refused.—Mines 92.3(2).

Tex.Civ.App.—Austin 1934. Statute empowering Railroad Commission to investigate petroleum industry, and authorizing Commission to require certain reports, make inspections, and examine records whenever "necessary," held not unconstitutional as conferring arbitrary power to make unreasonable searches. Vernon's Ann.Civ.St. art. 6049c, § 5; U.S.C.A. Const.Amend. 4; Vernon's Ann.St. Const. art. 1, § 9.—Culver v. Smith, 74 S.W.2d 754, writ refused.—Searches 7(25).

Tex.Civ.App.—San Antonio 1954. Persons, having or claiming a direct interest in the object and subject-matter of suit, whose interest will necessarily be affected by any judgment that may be rendered therein, are not only "proper parties" but are "necessary" and "indispensable parties" to suit.—Douglas v. Butcher, 272 S.W.2d 553, ref. n.r.e.—Parties 18, 29.

Tex.Civ.App.—Dallas 1961. Finance company failed to show that automobile purchased by wife was a reasonable and proper expense and finance company was not entitled to finding that it was a "necessary" as matter of law within statute authorizing, in such cases, execution against community property. Vernon's Ann.Civ.St. arts. 4621, 4623.—Allied Finance Co. v. Butaud, 347 S.W.2d 366.—Hus & W 270(11).

Tex.Civ.App.—Dallas 1952. Under statute prohibiting judgment against husband's property or the property of the marital community for debts of wife, except those contracted for necessities, rent is not of a "necessary" unless it is so created by the act of the wife herself. Rev.St.1925, art. 4623.—*Jordan v. Madison*, 250 S.W.2d 228.—*Hus & W* 19(14), 268(4).

Tex.Civ.App.—Texarkana 1962. Services of employment agency were not a "necessary", and married woman's contract for such services was unenforceable against her and her husband.—*Approved Personnel Service v. Dallas*, 358 S.W.2d 150.—*Hus & W* 19(14), 83.

Tex.Civ.App.—Amarillo 1934. Household electric light bill held "necessary" for which a wife's interest in community property is liable. *Vernon's Ann.Civ.St. arts. 4620, 4623.*—*Flowers v. Smith*, 80 S.W.2d 392.

Tex.Civ.App.—El Paso 1944. Where, in a proceeding other than a divorce case, legal services are required on behalf of a wife, even though on account of her misconduct, such service is a "necessary" for which husband is liable. *Vernon's Ann.Civ.St. arts. 1984, 4623.*—*Cohen v. Cohen*, 181 S.W.2d 915.—*Hus & W* 19(18).

Tex.Civ.App.—El Paso 1936. Where there is a grant of land with full covenants of warranty, and without express reservation of an easement, there can be no reservation by implication, unless the easement is strictly necessary, the term "necessary" meaning that there can be no other reasonable mode of enjoying the dominant tenement without the easement.—*Scarborough v. Anderson Bros. Const. Co.*, 90 S.W.2d 305, writ dismissed.

Tex.Civ.App. 1906. A buggy is not a "necessary" to an infant not engaged in any business requiring the use of a buggy, nor attending school, so as to make it necessary for him to ride to and from school.—*Heffington v. Jackson & Norton*, 96 S.W. 108, 43 Tex.Civ.App. 560.

Tex.Civ.App. 1904. An irrigation act was attacked for uncertainty in the description of those portions of the state to which it was made to apply, the alleged insufficient description being as follows: "Those portions of the state of Texas in which, by reason of insufficient rainfall, or by reason of irregularity of the rainfall, irrigation is beneficial for agricultural purposes." The appellate court, in passing on this objection, held that the act was not void for uncertainty, basing this holding on the holding of the court in the case of *McGhee Irrigation Ditch Co. v. Hudson*, 22 S. W. 398, 85 Tex. 587, 590, in which case it was held that a similar irrigation act, which described the portions of the state to which it applied "as those in which, by reason of insufficient rainfall, irrigation is necessary for agricultural purposes," was not void for uncertainty. The only difference in the description in that act and the act under consideration is in the use of the word "necessary," instead of the word "beneficial"; and the court held this difference immaterial.—*Borden v. Trespalacios Rice & Irr. Co.*, 82 S.W. 461, affirmed 86 S.W. 11, 98 Tex. 494, 107 Am.St.Rep.

640, affirmed 27 S.Ct. 785, 204 U.S. 667, 51 L.Ed. 671.

Tex.Civ.App. 1896. Under Rev.St.1895, art. 2395, subd. 15 (*Vernon's Ann.Civ.St. art. 3832*) exempting from forced sale "all provisions and forage on hand for home consumption," cotton seed suitable for feeding stock is exempt, if the supply reserved be not unreasonably excessive, though it may not, in view of other forage on hand, be indispensable; and therefore an instruction that the forage must be "necessary" for home consumption, to render it exempt, is erroneous.—*Stephens v. Hobbs.*, 36 S.W. 287, 14 Tex.Civ.App. 148.—*Exemp* 43.

Vt. 1992. Wildlife habitat is "necessary" within meaning of statute restricting any development that significantly imperils "necessary wildlife habitat," if it is decisive to survival of those members of particular species which depend upon that habitat; habitat need not be necessary for survival of species within state as whole. 10 V.S.A. § 6086(a)(8)(A).—*In re Killington, Ltd.*, 616 A.2d 241, 159 Vt. 206.—*Environ Law* 526.

Vt. 1989. Wildlife habitat is "necessary," within meaning of statute restricting any development that significantly imperils "necessary wildlife habitat," if it is decisive to survival of those members of particular species which depend upon that habitat; habitat need not be necessary for survival of species within state as whole. 10 V.S.A. § 6086(a)(8)(A).—*In re Southview Associates*, 569 A.2d 501, 153 Vt. 171.—*Environ Law* 526.

Vt. 1951. Under livestock policy covering death occurring from destruction if insured obtains certificate from veterinarian appointed by insurer that destruction is necessary in order to immediately relieve incurable suffering, the word "necessary" would mean indispensable, unavoidable or impossible to be dispensed with.—*Abraham v. Insurance Co. of North America*, 84 A.2d 670, 117 Vt. 75, 29 A.L.R.2d 783.—*Insurance* 2160(3).

Va. 1942. In prosecution for violating the Sunday law, defendant was entitled to instruction that if jury found that keeping open by defendant of his place of business on Sunday and sale therein of beer were reasonably essential to the economic, social or moral welfare of the community, and that the premises where business was transacted were kept in orderly manner then jury might find that such work was "necessary" within Sunday statute excepting a "work of necessity" and if jury so found they should find defendant not guilty. Code 1919, § 4570, as amended by Acts 1932, c. 328.—*Francisco v. Com.*, 23 S.E.2d 234, 180 Va. 371.—*Sunday* 29(4).

Va. 1923. Coal leases, granting right to use so much of surface, timber, sand, stone, and water as might be "necessary" or convenient for mining or coking coal, and constructing or repairing buildings, roads, etc., did not embrace every use for which the surface might in the future be convenient, but did embrace every use for which it was presently convenient and would be reasonably necessary in the immediate future in carrying into execution plans

already made and in process of execution, as "convenient" means fit or adapted to an end, suitable, or appropriate.—*Hagan Co. v. Norton Coal Co.*, 119 S.E. 153, 137 Va. 140.—*Mines* 62.1.

Va. 1923. Under a mining lease the lessee was entitled to use the surface when "necessary or convenient" for mining, etc. "Necessary or convenient" is less restrictive in meaning, than if the single word "necessary" had been employed. The context in which the word "convenient" is found limits its meaning so that it cannot be properly construed to embrace every use for which the surface may at any time in the future be convenient; but it does embrace every use for which the surface, etc., was convenient at the time and would be reasonably necessary in the immediate future, in order to carry into execution plans of the lessee already actually made and in process of execution.—*Hagan Co. v. Norton Coal Co.*, 119 S.E. 153, 137 Va. 140.—*Mines* 62.1.

Va. 1907. In the absence of other evidence, the mere fact that a contractor is engaged in double tracking a railroad under a contract with the company, and that his servants, for their own convenience, walk along the track in going to and returning from their work, with the knowledge and acquiescence of the company, does not put such servants in the category of invitees of the company. They may not be guilty of contributory negligence merely because walking on the track, but a higher degree of care is imposed on them to look out for approaching trains or other sources of danger than if they were on the track by express invitation of the company or as a necessary result of their employment by the contractor. In the case at bar there is no evidence that it was "necessary"—that is, unavoidable—that the servants of the contractor should walk on the track.—*Norfolk & W. Ry. Co. v. Denny's Adm'r*, 56 S.E. 321, 106 Va. 383.—*R R* 358(1).

Va.App. 1993. Use of home care nursing service to change dressing on claimant's burn was "necessary" for purposes of provision of workers' compensation statute requiring employer to furnish medical attention after accident, even though it may have been possible for dressing to be changed at another location at less cost; evidence showed that periodic dressing changes were medically necessary, and there was no showing that claimant knew that treatment was excessive or unnecessary so that he should have refused to accept it or requested alternate, less costly form of care. Code 1950, § 65.2-603.—*Lynchburg Foundry Co. v. Goad*, 427 S.E.2d 215, 15 Va.App. 710.—*Work Comp* 969.

Wash. 1968. Word "necessary," as used in connection with eminent domain statutes, means reasonable necessity under circumstances, and it does not mean immediate, absolute, or indispensable need, but rather considers the right of public to expect or demand that certain services be provided.—*City of Des Moines v. Hemenway*, 437 P.2d 171, 73 Wash.2d 130.—*Em Dom* 56.

Wash. 1965. "Necessary" in statutory condemnation determination means reasonable necessity in the circumstances of the particular case.—*State v.*

Dawes, 404 P.2d 20, 66 Wash.2d 578.—*Em Dom* 56.

Wash. 1965. Word "necessary" as used in eminent domain statutes means reasonable necessity under circumstances of particular case.—*City of Tacoma v. Welcker*, 399 P.2d 330, 65 Wash.2d 677.—*Em Dom* 56.

Wash. 1963. The word "necessary," as used in condemnation statutes, means reasonable necessity, under the circumstances of the particular case. RCWA 47.12.010.—*State ex rel. Lange v. Superior Court*, 377 P.2d 425, 61 Wash.2d 153.—*Em Dom* 56.

Wash. 1962. The phrase "public use" is sufficiently broad to include an element of "necessity", and taking must be "necessary" even when it is county which seeks to condemn. Const. art. 1, § 16 as amended, amend. 9; RCWA 8.04.070, 8.08.040.—*King County v. Theilman*, 369 P.2d 503, 59 Wash.2d 586.—*Em Dom* 56.

Wash. 1958. Word "necessary" as used in statute making it an offense to omit wilfully, without lawful excuse, to furnish "necessary" food, clothing, shelter, or medical attendance for child or children or ward or wards, relates to minimum standard of quality and quantity of food, clothing, shelter, and medical attendance that a parent is required by law to furnish a child, and it is not necessary for a child to lack food, clothing, shelter, or medical attendance in order for them to be "necessary" within meaning of statute. RCW 26.20.030.—*State v. Brown*, 323 P.2d 239, 52 Wash.2d 92.—*Child S* 653.

Wash. 1944. Covenant prohibiting erection or maintenance of any buildings other than private residence or dwelling and "necessary outbuildings" for residents' uses did not permit erection of farm buildings such as small barn, chicken house, rabbitry, and piggery for personal use of occupants of dwelling, even if the word "necessary" were construed as meaning convenient.—*Granger v. Boulls*, 152 P.2d 325, 21 Wash.2d 597, 155 A.L.R. 523.—*Covenants* 51(2).

Wash. 1938. Under statute authorizing a Port Commission to acquire by eminent domain, property necessary for the purposes of the port district, while the word "necessary" means such property as is reasonably necessary for its purposes, it does not mean all such property as the Port Commission may deem it will possibly need at some remote time. Rem.Rev.Stat. § 9692.—*Hughbanks v. Port of Seattle*, 76 P.2d 603, 193 Wash. 498.

Wash. 1936. While duty of father to provide for his minor child in custody of another is limited to necessities, question to what extent, or what kind of, education is "necessary" is relative one, dependent upon particular circumstances.—*Feek v. Feek*, 60 P.2d 686, 187 Wash. 573.—*Child S* 116.

Wash. 1934. Under rule that, to create implied easement upon severance of an estate, the easement shall be "necessary," test of necessity is whether party claiming the right can, at reasonable cost, on his own estate and without trespassing on

his neighbors, create a substitute.—*Berlin v. Robbins*, 38 P.2d 1047, 180 Wash. 176.—Ease 16.

Wash. 1934. Where it was doubtful whether water of necessary quality and quantity could be obtained from a well dug on plaintiff's property for his dairy farm and would be expensive and necessitate going on land of his neighbors for plaintiff to secure water from city, existing pipe line running from spring on defendant's land to plaintiff's land held "necessary" within rule relating to creation of easement by implication upon severance of an estate.—*Berlin v. Robbins*, 38 P.2d 1047, 180 Wash. 176.—*Waters* 154(1).

Wash. 1923. Under Rem.Comp.St. §§ 9688–9718, authorizing the establishment of port districts with power to acquire by eminent domain property "necessary" for the purposes of the district, such a district does not have the power to acquire property which the port commission may deem that it will possibly need for its purposes at some remote time in the future, but only such property as is reasonably necessary for the purposes of the district and such as the comprehensive improvement scheme will require when completed.—*Port of Everett v. Everett Imp. Co.*, 214 P. 1064, 124 Wash. 486.—Em Dom 56.

Wash. 1914. The word "necessary," as used in *Laws* 1913, p. 412, providing that, when land is so situated with respect to other land that it is necessary for its use to have a private way of necessity, the right of condemnation exists, means reasonably necessary, and a contention that a private way of necessity for a logging road to reach a quarter section of land should be denied, because such quarter section had an outlet on a river navigable for floating logs, is untenable, where there were three other quarter sections sought to be reached by such road, which did not have such outlet, and there were ten quarter sections involved in the logging enterprise.—*State v. Superior Court for Chehalis County*, 144 P. 722, 82 Wash. 503, error dismissed *State of Washington ex rel. Grays Harbor Logging Co. v. Coats-Fordney Logging Co.*, 37 S.Ct. 295, 243 U.S. 251, 61 L.Ed. 702.

Wash. 1907. The term "necessary," as used in the statute, does not mean an absolute necessity, and that there shall be no other place for the location of the road, but means a reasonable necessity depending upon the circumstances of the particular case.—*State v. Superior Court of King County*, 90 P. 663, 46 Wash. 516.—Em Dom 47(2).

Wash. 1907. The word "necessary," as used in *Ballinger's Ann.Codes & St. § 4335*, providing that a corporation formed for the construction of a railroad shall have power to cross or join its railway with any other railway before constructed, and that, if the two corporations cannot agree as to the amount of compensation, it may be ascertained in the manner provided by law for the taking of lands necessary for the construction of its road, does not mean an absolute "necessity," or that there shall be no other place for the location of the road, but means a reasonable necessity, depending upon the circumstances of the particular case.—*State v. Su-*

perior Court of King County, 90 P. 663, 46 Wash. 516.

Wash.App.Div.1 1972. "Necessary," as used with respect to issue whether taking of land was necessary, means reasonable necessity under circumstances of particular case.—*King County v. Olson*, 501 P.2d 188, 7 Wash.App. 614.—Em Dom 56.

Wash.App.Div.2 1985. For purpose of determining whether defendant used more force toward another than necessary in self-defense, "necessary" means that no reasonably effective alternative to use of force appeared to exist and that amount of force used was reasonable to effect lawful purpose intended, under circumstances as they reasonably appeared to actor at time.—*State v. Sampson*, 699 P.2d 1253, 40 Wash.App. 594, review denied 104 Wash.2d 1005.—Assault 67.

W.Va. 1991. "Necessary" within statute authorizing dentist to prescribe drugs necessary to proper treatment of patient is intended to have essentially same meaning of "legitimate" in legislatively approved regulation stating that prescription for controlled substance must be for legitimate purpose by practitioner in usual course of professional practice. Code, 30–4–11, 60A–4–401(a).—*State v. Young*, 406 S.E.2d 758, 185 W.Va. 327.—Controlled Subs 10.

W.Va. 1963. Telephone service in office of county department of welfare was "necessary" within statutes requiring county court to provide adequate office space for county council and supply them with necessary things. Code, 7–3–2, 9–4–6.—*State ex rel. Smith v. Ritchie County Court*, 129 S.E.2d 319, 147 W.Va. 521.—Counties 48.

Wis. 1993. "Necessary," for purposes of statute prohibiting modification of custody order before two years after initial order is entered unless modification is necessary, embodies concepts that modification must operate to protect child from alleged harmful "custodial conditions," and that physical or emotional harm threatened by "current custodial conditions" must be severe enough to warrant modification. W.S.A. 767.325(1)(a).—*Stephanie R.N. v. Wendy L.D.*, 498 N.W.2d 235, 174 Wis.2d 745, reconsideration denied *Andrew N. v. Wendy L.D.*, 505 N.W.2d 142.—Child C 552.

Wis. 1983. Under statute forbidding custody modification absent substantial evidence supporting change of custody showing such removal is "necessary" to child's best interest, Supreme Court views "necessary" as implying that change of custody itself is needed because current custodial conditions are harmful in some way to best interest of child. W.S.A. 767.32(2).—*Millikin v. Millikin*, 339 N.W.2d 573, 115 Wis.2d 16.—Child C 554.

Wis. 1966. If insured seeking to recover under medical payment provision of automobile liability policy were malingering and if infrared treatments were rendered to him as result of such bad faith on his part, treatments would not be "necessary" under terms of policy covering necessary medical treatment.—*Koczka v. Hardware Dealers Mut. Fire Ins.*

Co., 138 N.W.2d 737, 29 Wis.2d 395.—Insurance 2481.

Wis. 1931. Automobile is not a “necessary” for an infant of small earning power who lived with parents three miles from city and had other means of transportation to his work.—*Schoenung v. Gallet*, 238 N.W. 852, 206 Wis. 52, 78 A.L.R. 387.—Infants 50.

Wis. 1931. The word “necessary,” within a statute subjecting to local taxation railroad property “not necessarily used” in operation of road, does not mean “inevitable” on the one hand, nor merely “convenient” or “profitable” on the other, but a stage of utility or materiality to the carrier’s business less than the first, but greater than the latter, of these expressions. Perhaps the phrase “reasonably required in the exercise of sound business prudence” would express the idea fairly well.—*Terminal Warehouse Co. v. City of Milwaukee*, 238 N.W. 513, 205 Wis. 607, 80 A.L.R. 247.

Wis. 1915. Terminal facilities, such as freight houses, grain elevators, and warehouses, owned by the carrier and equipped with the proper appliances necessary to enable it to perform its full duty of transportation and delivery of freight of all kinds, either to the consumer, the dealer, or a connecting carrier, constitute property “necessarily used in operating the railroad,” within the meaning of sub. 3, § 1212, Stats.1911, and are part of the entirety. The word “necessary,” in this connection, means reasonably required in the exercise of sound business prudence.—*Minneapolis, St. P. & S.S.M. Ry. Co. v. Douglas County*, 150 N.W. 422, 159 Wis. 408, Am. Ann.Cas. 1916E,1199.—Tax 391.

Wis. 1911. In prosecutions for homicide, in charging as to the presumption that persons intend the ordinary results of their acts, the words “necessary,” “probable,” “usual,” and “ordinary” are substantially synonymous.—*Beauregard v. State*, 131 N.W. 347, 146 Wis. 280.—Homic 1388.

Wis. 1904. The word “necessary,” in St.1898, § 4075, giving the privilege of secrecy to all information, required by a physician from patient in attending the latter professionally, necessary to enable prescription for such patient, will not receive any technical or unduly restricted meaning, and the testimony and opinion of a decedent’s attending physician as to her mental capacity, based entirely on information derived from her statements or the physician’s observation while treating her professionally, and for the purpose of such treatment, are properly excluded in a proceeding contesting the probate of decedent’s will.—*In re Hunt’s Will*, 100 N.W. 874, 122 Wis. 460.

Wis. 1904. The word “necessary,” as used in Rev. St.1898, c. 48, providing for the taxation of railroads according to gross profits, and section 1038, subd. 14, declaring that all the track, right of way, depot grounds, and buildings, machine shops, rolling stock, and all other property necessarily used in operating any railroad, shall be exempt from taxation for any purpose, except special assessments for local improvements, means neither inevitable nor merely convenient or profitable, but refers to a

stage of utility or materiality to the general business of a common carrier less than the first and greater than the latter of such expression.—*Chicago, St. P., M. & O.R. Co. v. Douglas County*, 99 N.W. 1030, 122 Wis. 273.

Wis.App. 2001. Requirement under the Fair Housing Amendments Act (FHAA) and the ADA that a proposed accommodation be “necessary” means that, but for the proposed accommodation, the handicapped individual will likely be denied an opportunity equal to that of persons who are not handicapped to enjoy the housing of his or her choice. Civil Rights Act of 1968, § 804, as amended, 42 U.S.C.A. § 3604; Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.—*State ex rel. Bruskewitz v. City of Madison*, 635 N.W.2d 797, 248 Wis.2d 297, 2001 WI App 233.—Civil R 131.

Wyo. 1942. In proceedings to review decision of State Land Board denying two applications for grazing leases of state land, evidence supported district court’s finding that use of such land was “necessary” to the two unsuccessful applicants, within statute granting a preferential right to lease state land, where no renewal lease is involved, to party to whom use of land is necessary, and who bids highest rental for the land. W.C.S.1945, § 24-113, 24-306.—*Sullivan Co. v. Meer*, 125 P.2d 168, 58 Wyo. 90.—Pub Lands 17.

Wyo. 1942. Under statute granting preferential right to lease state land, when no renewal lease is involved, to party to whom use of land is necessary, and who bids highest rental for the land, long use of land by applicants tended to show that the use was “necessary” within statute, so as to grant them a preferential right. W.C.S.1945, § 24-113.—*Sullivan Co. v. Meer*, 125 P.2d 168, 58 Wyo. 90.—Pub Lands 187.5.

NECESSARY ACCOMMODATIONS

Ind. 1911. “Necessary accommodations,” to maintain which a carrier can condemn lands, are such as are reasonably suitable and useful, and are not limited to those which are absolutely necessary.—*Chicago, I. & L. Ry. Co. v. Baugh*, 94 N.E. 571, 175 Ind. 419.

Okla. 1939. “Necessary accommodations,” to maintain which a carrier can condemn lands, are such as are reasonably suitable and useful, and are not limited to those which are absolutely necessary.—*Excise Board of Kay County v. Atchison, T. & S. F. R. Co.*, 91 P.2d 1087, 185 Okla. 327, 1939 OK 295.

NECESSARY ACT

Iowa 1984. “Necessary act,” under statute providing that upon the petition of an interested person the court may reopen an estate “if any necessary act remains unperformed,” refers to an act that is required by law of the administrator in order to properly close the estate. I.C.A. §§ 633.489, 633.489 comment.—*Matter of Estate of Witzke*, 359 N.W.2d 183.—Ex & Ad 509(4).

NECESSARY ACTION

Mass. 1937. An order of city council directing commissioner of public works to return veteran to work as laborer in public works department was not the "necessary action" contemplated by statute providing that where provisions of statute relating to veterans' preference and rule governing civil service have not been applied to labor service, selectmen and city council shall take any necessary action to secure employment of veterans in labor service of their respective cities and towns in preference to all other persons except women, so as to entitle discharged veteran to reinstatement as laborer in public works department. G.L. c. 31; c. 41, § 112; St.1919, c. 150, § 3.—*Malloy v. Mayor of Peabody*, 12 N.E.2d 197, 299 Mass. 110.—Mun Corp 218(11).

N.C.App. 1977. Action for divorce based upon one year's separation is not "necessary action" within meaning of statute empowering guardian to take possession of ward's estate and to bring "all necessary actions therefor." G.S. §§ 33-1 et seq., 33-20, 33-21, 33-23, 33-24, 33-28, 35-1 et seq.—*Freeman v. Freeman*, 237 S.E.2d 857, 34 N.C.App. 301.—Guard & W 118.

NECESSARY ADDITIONAL DEPOT GROUNDS

Iowa 1890. Laws of 1884, chapter 190, section 1, empowering railroad companies owning or operating a completed road to condemn lands for "necessary additional depot grounds," upon the certificate of the railroad commissioners as to the "amount and description of the additional lands necessary," etc., does not, by the use of the word "additional," restrict the right to condemn lands thereunder to stations already established, and at which the company already owns depot grounds in addition to its right of way, but authorizes the condemnation for the purposes of new stations, where the commissioners may regard them as necessary for the transaction of the business of the road.—*Jager v. Dey*, 45 N.W. 391, 80 Iowa 23.—Em Dom 20(2).

NECESSARY ADVERSE PARTIES

Wis. 1942. On a creditor's appeal from a judgment dismissing a claim which, if allowed, would be paid out of a decedent's personality of which the executors are for the time being the owners to the exclusion of creditors, heirs, legatees, and others beneficially interested in the estate, the executors are the only "necessary adverse parties" on whom notice of appeal must be served under statute. St.1939, §§ 274.11(1), 324.04.—*In re Krause's Will*, 2 N.W.2d 733, 240 Wis. 72.—Ex & Ad 256(5).

NECESSARY AND APPROPRIATE

S.D.N.Y. 1992. Order of independent administrator, who was appointed by court pursuant to consent decree in government's civil racketeering action against union, compelling employer to place "honorable discharge" notice in file of employee who was allegedly terminated for his union election campaign activity and to provide employee back pay was "necessary and appropriate" to implementation of decree and, thus, district court's exercise of All Writs Act jurisdiction over employer was appropriate;

decree recognized influence of organized crime in union and emphatically stated that influence should be eradicated and parties to decree agreed that it was imperative to maintain union democratically and with integrity for sole benefit of membership. 28 U.S.C.A. § 1651.—U.S. v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, 816 F.Supp. 852, stay granted 1992 WL 350803, reversed 3 F.3d 634.—Fed Civ Proc 2397.6; Fed Cts 10.1.

NECESSARY AND CONTINGENT EXPENSE

C.C.A.4 (W.Va.) 1937. City's judgment debt to contractor for breach of covenants of contract for waterworks held "necessary and contingent expense" within tax provisions of charter, and city was bound to provide for payment thereof by taxation Acts W.Va.1919, c. 126, § 8; Acts W.Va.1935, c. 141, § 60.—*City of Wheeling v. John F. Casey Co.*, 89 F.2d 308, certiorari denied 58 S.Ct. 15, 302 U.S. 697, 82 L.Ed. 538.—Mun Corp 962.

NECESSARY AND CONVENIENT

N.Y.A.D. 3 Dept. 1908. Where a proposed railroad, only 12 miles in length, to be built as an independent road, would serve only a small locality, would probably not earn running expenses, and would be financially disabled from the start, a finding by the board of railroad commissioners that it was "necessary and convenient" was erroneous.—*People ex rel. Potter v. Board of Railroad Com'rs*, 108 N.Y.S. 288, 124 A.D. 47, affirmed 85 N.E. 1114, 192 N.Y. 573.

NECESSARY AND ESSENTIAL

Fed.Cl. 1995. Tenth Circuit's determination in Indian tribes' suit for injunction against Department of Interior (DOI) that DOI breached its trust obligations by approving communitization agreements extending terms of certain mineral leases DOI had issued on tribes' land was essential predicate to court's ultimate conclusion that DOI abused its discretion under Mineral Leasing Act, i.e., judgment depended upon determination that DOI breached its trust obligations, and thus, Tenth Circuit's judgment satisfied "necessary and essential" requirement for issue preclusion in tribes' subsequent suit against DOI seeking monetary damages for breach of trust. 25 U.S.C.A. § 396d.—*Cheyenne-Arapaho Tribes of Oklahoma v. U.S.*, 33 Fed. Cl. 464.—Judgm 724.

Ga. 1976. Words "necessary and essential," within statute providing in effect that publication of evidence obtained under surveillance warrant shall cause it to be inadmissible unless publication is necessary and essential to preparation of and actual prosecution for crimes specified in warrant, refer to that which is reasonably necessary and essential to preparation and actual prosecution for a crime; what is reasonable will depend on facts of given case and rests in controlled discretion of district attorney, subject to review by trial court. Code, § 26-3004(k).—*Orkin v. State*, 223 S.E.2d 61, 236 Ga. 176, 82 A.L.R.3d 344.—Crim Law 394.3.

Minn.App. 2001. Under Wisconsin law, jury finding on property owners' causal fault was not "necessary and essential" to federal judgment for inn patron in action against management corporation that operated inn, in which management corporation sought contribution or indemnity from property owners, and thus collateral estoppel did not bar property owners from challenging liability in subsequent state court action against them brought by patron, in which patron sought damages for injuries sustained when dock collapsed, even though federal jury found property owners 45 percent liable, where final federal judgment was based on causal fault of management corporation and damages determination, and no property owners could not appeal federal judgment.—*Marshall v. Inn on Madeline Island*, 631 N.W.2d 113, review denied.—Judgm 829(3).

NECESSARY AND IMPORTANT FACTOR

D.Me. 1982. Counsel were entitled to attorney's fees under Civil Rights Attorney's Fees Award Act for their services in obtaining reappointment of special master to oversee implementation of consent decree in civil rights actions where counsel had to investigate status of defendants' compliance efforts to date, stipulation agreement which resolved controversy specifically identified areas in which defendants were not in compliance with decree, and thus record established that efforts of plaintiffs' counsel were "necessary and important factor" in continuing special master's office and in assuring defendants' commitment to comply with their legal obligations under decree. 42 U.S.C.A. §§ 1983, 1988.—*Wuori v. Concannon*, 551 F.Supp. 185.—Civil R 301.

NECESSARY AND INCIDENTAL TO PUBLIC EDUCATION

Ga. 1994. Improvements to increase safety of road leading to school were not "necessary and incidental to public education" and, therefore, could not constitutionally be paid for with school tax funds, and, thus, county was required to pay, even though improvements would insure safety of road on which school buses traveled; improvements were not to portion of road adjoining school and required purchase of rights of way for county, and they strayed from school district's principal responsibility and benefited citizens of county. Const. Art. 8, § 5, Par. 1; Art. 8, § 6, Par. 1(a, b); Art. 9, § 2, Pars. 1, 3; Art. 9, § 4, Par. 1; O.C.G.A. §§ 20-2-411, 32-4-41(1), 48-5-220, 48-5-220(6).—*DeKalb County School Dist. v. DeKalb County*, 440 S.E.2d 185, 263 Ga. 879.—Schools 110.

NECESSARY AND INDISPENSABLE PARTIES

Ill. 1900. Persons whose interests will necessarily be affected by any decree that can be rendered are necessary and indispensable parties. "Necessary and indispensable parties" include all persons who have an interest in the controversy of such a nature that the final decree cannot be made without either affecting their interests, or leaving the controversy in such condition that its final termination may be wholly inconsistent with equity and good con-

science. "The term 'necessary parties' also includes persons who are so connected with the subject-matter of the controversy that it is necessary to have them before the court for the proper protection of those whom the decree will necessarily and directly affect."—*Chandler v. Ward*, 58 N.E. 919, 188 Ill. 322.

Ind.App. 1940. Objections to probate of will need not name parties who are beneficially interested, but formal complaint must be filed stating objections, and all persons whose interests will necessarily be affected by any decree are "necessary and indispensable parties," and court should not proceed to decree without them either as plaintiffs or defendants. Burns' Ann.St. § 7-504.—*Moll v. Goedeke*, 25 N.E.2d 258, 107 Ind.App. 446.—Wills 263.

Miss. 1953. Co-owners and co-grantors were not "necessary and indispensable parties" to suit to set aside mineral deed and royalty transfer, conveying undivided one-half interest in oil, gas and other minerals, and subsequent conveyances by grantee, insofar as such conveyances affected mineral interest of mentally incompetent grantor in the land, since interests of the several grantors were separate and distinct and complainant sought and was entitled to no relief against co-grantors who hence had no interest in subject matter of suit.—*Calcote v. Wise*, 68 So.2d 477, 219 Miss. 270.—Can of Inst 35(1).

N.M.App. 1998. All persons whose interests will necessarily be affected by a judgment or order in a particular case are "necessary and indispensable parties."—*Brantley Farms v. Carlsbad Irr. Dist.*, 954 P.2d 763, 124 N.M. 698, 1998-NMCA-023.—Parties 18, 29.

N.C. 1941. Where testator devised and bequeathed his estate to his wife for life and on her death to their children, and after testator's death his estate passed informally into hands of wife who executed a trust agreement to trust company whereby realty and personalty, including that owned by testator, were conveyed and assigned, and trust company foreclosed certain alleged liens on part of the realty, and by alleged fraud obtained judgments by which ownership was vested in itself, trial court in action by administrator of testator to set aside the judgments, wherein trust company filed a cross-action, properly made testator's children and their spouses parties defendant, since they were "necessary and indispensable parties" to a final determination.—*Pegram v. Wachovia Bank & Trust Co.*, 13 S.E.2d 249, 219 N.C. 224.—Judgm 457.

Okla. 1938. Persons in class whose interests in subject matter of suit and relief sought are so bound up with that of other parties that their legal presence as parties to proceeding is an absolute necessity, without which the court cannot proceed, are "necessary and indispensable parties," who are required to be joined as defendants under statute. 12 Okl.St. Ann. § 231.—*Amoskeag Sav. Bank v. Eppler*, 77 P.2d 1158, 182 Okla. 391, 1938 OK 210.—Parties 29.

Pa. 1975. Persons to whom vendors allegedly sold restaurant and cocktail lounge after they had declared forfeiture of a contract for purchase of such property and repossessed the property were "necessary and indispensable parties" in action in equity by purchasers under such contract for specific performance of the contract; court of common pleas lacked jurisdiction to entertain the action in absence of such necessary parties.—*Huston v. Campanini*, 346 A.2d 258, 464 Pa. 147.—Spec Perf 106(1).

Tex. 1956. All persons who have or claim a direct interest in object and subject matter of suit and whose interests will necessarily be affected by any judgment which may be rendered therein, are not only "proper parties" but are "necessary and indispensable parties".—*Scott v. Graham*, 292 S.W.2d 324, 156 Tex. 97.—Parties 18, 29.

Tex.Civ.App.—Fort Worth 1972. All persons who have or claim a direct interest in object and subject matter of suit and whose interests will necessarily be affected by any judgment that may be rendered therein are not only proper parties but are "necessary and indispensable parties." Rules of Civil Procedure, rule 93.—*Miller v. Miller*, 487 S.W.2d 382, ref. n.r.e.—Parties 18, 29.

Tex.Civ.App.—Austin 1957. All persons who have or claim direct interest in object and subject matter of suit and whose interests will necessarily be affected by any judgment rendered therein are not only "proper parties" but also "necessary and indispensable parties".—*Hill v. Carr*, 307 S.W.2d 828.—Parties 18, 29.

Tex.Civ.App.—San Antonio 1950. Where purchaser sought specific performance of written contract of sale of realty only insofar as vendor, who allegedly owned only an undivided interest in the realty, was able to consummate contract, vendor's co-owners were not "necessary and indispensable parties" to suit, in absence of allegation or evidence of any controversy between joint tenants as to the undivided interest owned by each.—*Jones v. English*, 235 S.W.2d 238, dismissed.—Ten in C 55(4).

Tex.Civ.App.—San Antonio 1950. Where purchaser was willing to accept realty subject to all outstanding leases, lessees were not "necessary and indispensable parties" to suit by purchaser for specific performance of written contract of sale of realty.—*Jones v. English*, 235 S.W.2d 238, dismissed.—Spec Perf 106(1).

NECESSARY AND INDISPENSABLE PARTY

C.A.7 (Ill.) 1949. Housing Expediter officially residing in Washington was a "necessary and indispensable party" to landlord's action for declaratory judgment brought against Office of Housing Expediter and subordinate officials in Federal District Court of Illinois to have maximum rent established after agents allegedly used a standard in conflict with the Housing and Rent Acts of 1947 and 1948. 28 U.S.C.A. 2201, 2202; Housing and Rent Act of 1947, Secs. 1 et seq., 201(b), 204(b), 204(e)(4), as amended by Housing and Rent Acts of 1948, Secs. 202(b), 202(d), 50 U.S.C.A. Appendix, 1881 et seq.,

1891(b), 1894(b), 1894(e)(4).—*Jacobs v. Office of Housing Expediter*, 176 F.2d 338.—Fed Civ Proc 219.

D.Hawai'i 1998. Beneficiary of life insurance policy was "necessary and indispensable party" to beneficiaries' suit against agent for failure to disclose policy exclusion and, therefore, could not be dismissed to preserve diversity jurisdiction; his twenty percent interest in the proceeds was interest in the subject matter. 28 U.S.C.A. § 1332; Fed. Rules Civ.Proc. Rules 19(a)(2), (b), 21, 28 U.S.C.A.—*Mayer v. Fujimoto*, 181 F.R.D. 453, affirmed 173 F.3d 861.—Fed Civ Proc 211; Fed Cts 306.

W.D.Ky. 1949. A suit to enjoin enforcement of order requiring handlers of milk under market order issued pursuant to Agricultural Marketing Agreement Act to treat milk received from plaintiff as receipts from a producer and not a handler could not be maintained solely against deputy market administrator, who, as a subordinate of the Secretary of Agriculture, merely performed acts committed to him by order, and Secretary was a "necessary and indispensable party". Agricultural Adjustment Act, § 1 et seq., as amended by Agricultural Marketing Agreement Act of 1937, 7 U.S.C.A. § 601 et seq.—*Gudgel v. Iverson*, 87 F.Supp. 834.—Fed Civ Proc 219.

D.Mass. 1942. Obedience by the acting postmaster in Boston to a fraud order issued against plaintiff by the Postmaster General was "mandatory", and the Postmaster General was a "necessary and indispensable party" to an action to enjoin acting postmaster from interfering with plaintiff's mail pursuant to order. 39 U.S.C.A. §§ 259, 732.—*Gargilis v. Gleavy*, 45 F.Supp. 721.—Postal 26.

D.N.J. 1945. In action to enjoin Postmaster General and local postmaster from carrying into effect a fraud order made by Postmaster General, excluding from the mails matter addressed to plaintiff, Postmaster General was not a "necessary and indispensable party," so that failure to obtain jurisdiction over him did not require dismissal of action against local postmaster as well. 39 U.S.C.A. §§ 259, 732.—*Pinkus v. Walker*, 61 F.Supp. 610.—Inj 114(3); Postal 26.

Ark. 1942. The United States Secretary of Agriculture was not a "necessary and indispensable party" to a suit by judgment creditor to restrain county administrative assistant from delivering to judgment debtor a rental check drawn by United States Secretary of Agriculture in favor of debtor in payment of amount due debtor for complying with federal government's conservation program, where Secretary of Agriculture did not claim any interest, did not ask to be made party and it was conceded that neither United States nor any of its agencies claimed to have any interest.—*Tilmon v. Adkisson*, 162 S.W.2d 903, 204 Ark. 436.—Inj 114(3).

Cal.App. 1 Dist. 1941. Where complaint in suit in equity upon a so-called creditor's bill against deceased judgment debtor's grantee to adjudge a transfer of realty fraudulent pleaded a judgment

enforceable against deceased alone and also pleaded nonliability of grantee, deceased's estate was a "necessary and indispensable party" to litigation, and until those proceedings were had no cause of action was stated against grantee. Prob.Code, §§ 579, 580.—*Staniels v. Copeland*, 119 P.2d 396, 48 Cal.App.2d 124.—Ex & Ad 423.

Ill.App. 2 Dist. 1991. A "necessary and indispensable party" is one who's presence in litigation is required when substantial interest of absent party will be affected by judgment entered in his or her absence or when necessary to allow court completely to resolve controversy.—*State Farm Mut. Auto. Ins. Co. v. Haskins*, 158 Ill.Dec. 838, 574 N.E.2d 1231, 215 Ill.App.3d 242.—Parties 18, 29.

Kan. 1946. Where action was brought to recover damages for personal injuries from an explosion of an electrical exhauster against city and city board of public utilities, the city was a "necessary and indispensable party" thereto, and, hence, ruling sustaining city's demurrer to the petition which was not timely appealed from, resulted in an abatement of the action. Gen.St.Supp.1945, 13-1253 to 13-1255, 13-1256, 13-1269 to 13-1273.—*Hubert v. Board of Public Utilities of Kansas City*, 174 P.2d 1017, 162 Kan. 205.—Abate & R 27; Mun Corp 857.

Miss. 1953. One against whom no relief is sought or from whom no relief should be granted is not a "necessary and indispensable party" to suit.—*Calcote v. Wise*, 68 So.2d 477, 219 Miss. 270.—Parties 29.

Mo. 1931. County in which no part of waterworks plant is located held not "necessary and indispensable party" to agreed case involving power of taxation. V.A.M.S. §§ 511.740, 511.750.—*Joplin Waterworks Co. v. Jasper County*, 38 S.W.2d 1068, 327 Mo. 964.—Submis of Con 4.

N.J.Ch. 1945. In stockholder's suit, where complainant sought relief on behalf of corporation on ground that corporation would not seek relief for itself, corporation on motion for removal of cause to federal court on ground of diversity of citizenship, was a "necessary and indispensable party" and not a merely "formal or nominal party".—*Taylor v. Cornman Const. Co.*, 41 A.2d 208, 136 N.J.Eq. 252.—Rem of C 31.

N.M. 1969. Evidence was sufficient to rebut presumption that husband of defendant was father of child of which putative father was attempting to gain custody, so that husband of defendant was not a "necessary and indispensable party" to the action.—*Torres v. Gonzales*, 450 P.2d 921, 80 N.M. 35.—Child 6.

N.M.App. 2002. A "necessary and indispensable party" is one whose interests will necessarily be affected by the judgment so that complete and final justice cannot be done between the parties without affecting those rights.—*Toscano v. Lovato*, 40 P.3d 1042, 131 N.M. 598, 2002-NMCA-022.—Parties 18, 29.

Tex. 1970. In suit by grantor against grantee who cancelled deed, grantee's vendee is not "neces-

sary and indispensable party"; accordingly, purchaser of pipeline right-of-way from grantee was not necessary and indispensable party to suit for cancellation brought by guardian of grantor. Rules of Civil Procedure, rule 39.—*Oak Park Trust and Sav. Bank, Oak Park, Ill. v. O'Byrne*, 457 S.W.2d 277.—Can of Inst 35(3).

Tex.Civ.App.—San Antonio 1950. A person having an interest in the controversy of such a nature that a final decree cannot be made without affecting such interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience is a "necessary and indispensable party".—*Jones v. English*, 235 S.W.2d 238, dismissed.—Parties 18, 29.

NECESSARY AND INTEGRAL

Ind. 1990. Public transportation corporation's wreckers and supervisors' automobiles were "necessary and integral" parts of transportation system, and thus fuel used in vehicles was exempt from special fuel tax under statute exempting those transactions involving special fuel sold to public transportation corporation and used for "transportation of persons for compensation". IC 6-6-2.1-301(4) (1982 Ed.)—*Indiana Dept. of State Revenue v. Indianapolis Public Transp. Corp.*, 550 N.E.2d 1277.—Tax 1267.

Ind.Tax 1989. Exemption from use tax based on "direct use" is determined by whether the item is a "necessary and integral" part of transportation service. IC 6-2.5-5-27 (1988 Ed.)—*USAir, Inc. v. Indiana Dept. of State Revenue*, 542 N.E.2d 1033, affirmed 582 N.E.2d 777, rehearing denied.—Tax 1232.

Ind.Tax 1987. Wreckers used to tow disabled coaches to public transportation corporation's garage for repair were "necessary and integral" to corporation's operations, and thus special fuel used in wreckers was exempt from special fuel tax under statutory exception for fuel sold to public transportation corporations. IC 6-6-2.1-301(4) (1982 Ed.)—*Indianapolis Public Transp. Corp. v. Indiana Dept. of State Revenue*, 512 N.E.2d 906, affirmed 550 N.E.2d 1277.—Tax 1295.

NECESSARY AND LAWFUL EXPENSE

Tex. 1943. Where insured, against whom judgment in personal injury action was rendered, was protected by two public liability policies, each containing an "other insurance" clause, and insured relied upon attorneys furnished by insurers in defending the personal injury action, amount that insured was required to expend for attorneys' fees after judgment in personal injury action had become final, when insurers refused to pay the judgment, could not be recovered by insured as a "necessary and lawful expense" in the personal injury action.—*Traders & General Ins. Co. v. Hicks Rubber Co.*, 169 S.W.2d 142, 140 Tex. 586.—Insurance 2270(1).

NECESSARY AND ORDINARY BUSINESS EXPENSE

N.D. 1995. Contribution of former husband, who was attorney, to his law firm's pension plan was not "necessary and ordinary business expense" deductible from his income from self-employment, for purpose of calculating child support under guidelines. N.D. Admin. Code § 75-02-04.1-01(5).—*Smith v. Smith*, 538 N.W.2d 222.—Child S 356.

NECESSARY AND ORDINARY COSTS

Wash.App. Div. 2 1996. For purposes of Medicaid nursing services and administration and operations reimbursements by Department of Social and Health Services (DSHS), "necessary and ordinary costs" meant prior period costs plus inflation adjustment factor set by legislature; statutory scheme created no presumption that lidded costs set minimum level for compensation to nursing facilities and did not require reimbursement for actual costs. West's RCWA 74.46.010.—*Seatoma Convalescent Center v. Department of Social and Health Services*, 919 P.2d 602, 82 Wash.App. 495, review denied 930 P.2d 1230, 130 Wash.2d 1023.—Health 487(4).

NECESSARY AND PROPER

U.S.Md. 1954. Under constitutional authorization to Congress to pass laws "necessary and proper" to carry into effect its power to procure testimony, Congress had the power to extend to witnesses before congressional committees protection against use of the testimony so given in prosecution in any court, since measure adopted was "appropriate" means of exercising constitutional power. 18 U.S.C.A. § 3486; U.S.C.A. Const. art. 1, § 8; Amend. 5.—*Adams v. State of Md.*, 74 S.Ct. 442, 347 U.S. 179, 98 L.Ed. 608.—Crim Law 42.

C.C.A.9 (Cal.) 1942. Under the constitutional provision empowering Congress to make all laws which shall be "necessary and proper" for carrying into execution the preceding enumerated powers, the quoted words are not limited to such measures as are absolutely necessary, without which the powers granted must fail of execution, but they include all appropriate means which are conducive to the end to be accomplished, and which, in the judgment of Congress, will most advantageously effect it. U.S.C.A.Const. art. 1, § 8, cl. 18.—*Kharaiti Ram Samras v. U.S.*, 125 F.2d 879, certiorari denied 63 S.Ct. 34, 317 U.S. 634, 87 L.Ed. 511.—U S 22.

C.C.A.9 (Cal.) 1942. The statute extending provisions for naturalization of aliens only to aliens being free white persons and to aliens of African nativity and persons of African descent is not void on ground that it is not "necessary and proper" within constitutional provisions empowering Congress to make all laws which shall be necessary and proper for carrying into execution the preceding enumerated powers. Rev.St. § 2169, as amended 8 U.S.C.A. § 703 note; U.S.C.A.Const. art. 1, § 8, cl. 18.—*Kharaiti Ram Samras v. U.S.*, 125 F.2d 879,

certiorari denied 63 S.Ct. 34, 317 U.S. 634, 87 L.Ed. 511.—Aliens 60.1.

D.D.C. 1983. Where acute care hospital organized a subsidiary corporation to operate group practice outpatient centers and made interest-free loans to the subsidiary from working capital and hospital thereafter borrowed money to finance a new hospital facility, the entire amount of interest was neither "necessary" nor "necessary and proper" for purpose of part A medicare reimbursement and reimbursement was properly reduced by imputing interest on funds advanced to the subsidiary, notwithstanding that medicare part B provides reimbursement for treatment in an ambulatory clinic. Social Security Act, §§ 1832(a)(2)(F), 1861(v)(1)(A), 42 U.S.C.A. §§ 1395k(a)(2)(F), 1395x(v)(1)(A); Public Health Service Act, §§ 328(b)(1), 1502(a)(1, 13), 42 U.S.C.A. §§ 254a-1(b)(1), 300k-2(a)(1, 13); National Health Planning and Resources Development Act of 1974, § 2(a)(4), 42 U.S.C.A. § 300k(a)(4).—*Portland Adventist Medical Center v. Heckler*, 561 F.Supp. 1092.—Health 535(4).

D.Mass. 1982. Cost actually incurred by approved provider of hospital services under medicare program should not be disallowed merely because it is not a common and accepted occurrence in field of provider's activities; use of word "usually" in regulation governing necessary and proper costs indicates that claimed costs can be "necessary and proper" even if it is not such common and accepted occurrence. Social Security Act, § 1861(v)(1)(A) as amended 42 U.S.C.A. § 1395x(v)(1)(A).—*Faulkner Hospital Corp. v. Schweiker*, 537 F.Supp. 1058, affirmed 702 F.2d 22.—Health 535(4).

S.D.N.Y. 1984. Specific facts underlying a particular medicare provider's closing of part of its facility, including extent and anticipated duration thereof, and the underlying circumstances and occupancy rate at the time, and not mere prevalence of industrywide closing practice, is determinative of whether costs associated with the closed unit are reimbursable as "necessary and proper," and prevalence of an industry practice may merely be indicative of widespread inefficiency. Social Security Act, §§ 1801 et seq., 1814(b), 1861(v), as amended, 42 U.S.C.A. §§ 1395 et seq., 1395f(b), 1395x(v).—*New York Eye and Ear Infirmary v. Heckler*, 594 F.Supp. 396.—Health 527, 535(4).

W.D.Va. 1932. As used in U.S.C.A.Const. art. 1, § 8, cl. 18, giving Congress the power to make all laws necessary and proper for carrying into execution the powers conferred, the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution, but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which, in the judgment of Congress, will most advantageously effect it.—*U.S. v. Griffin*, 58 F.2d 674.

Bkrtcy.S.D.Ala. 2001. When an item is solely designed to enhance the prestige or status of its owner, then the item is not "necessary and proper"

wearing apparel, within meaning of the Alabama exemption. Ala.Code 1975, § 6-10-6.—In re Peterson, 280 B.R. 886.—Exemp 40.

Bkrtcy.E.D.Tenn. 1998. Costume jewelry and engagement ring given to debtor by her former husband, which she no longer wore, were not “necessary and proper” wearing apparel and, thus, debtor was not entitled to claim such items as exempt under Tennessee law. T.C.A. § 26-2-103.—In re Hazelhurst, 228 B.R. 199.—Exemp 40.

Alaska 1980. Statute providing that if the person being arrested either flees or forcibly resists after notice of intention to make the arrest the officer may use all necessary and proper means to effect the arrest did not authorize law enforcement personnel to employ deadly force to arrest fleeing suspects under any and all circumstances; rather, the “necessary and proper” terminology was to be construed in light of relevant portions of the new Criminal Code which became effective on January 1, 1980. AS 11.81.370, 11.81.900(12), 12.25.080.—State v. Sundberg, 611 P.2d 44, appeal after remand 657 P.2d 843, appeal after remand 667 P.2d 1268.—Arrest 68(2).

Idaho 1906. The allegation in an information that the board of county commissioners did not make “necessary and proper” rules and regulations to prevent the outbreak and spread of contagious and infectious diseases is not a sufficient allegation that no rules or regulations in regard thereto had been made.—Corker v. Pence, 85 P. 388, 12 Idaho 152.

Neb. 1898. “We are not aware of any opinion in which the word ‘necessary’ is so thoroughly discussed as in *McCulloch v. State of Maryland*, 17 U.S. 316, 4 Wheat. 316, 4 L.Ed. 579, from which the following language of Marshall, C. J., is quoted: ‘Congress is not empowered by it [the Constitution] to make all laws which may have relation to the powers conferred on the government, but such only as may be “necessary and proper” for carrying them into execution. The word “necessary” is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers to such as are indispensable, and without which the power would be nugatory; that it excludes the choice of means, and leaves to Congress in each case that only which is most direct and simple. Is it true that this is the sense in which the word “necessary” is always used? Does it always import an absolute, physical necessity, so strong that one thing to which another may be termed “necessary” cannot exist without that other? We think it does not. If reference be had to its use in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient or useful or essential to another. To “employ the means necessary to an end” is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be unattainable. Such is the character of human language that no word conveys to the mind, in all situations, one single definite idea, and nothing is more common than to use

words in a figurative sense. Almost all compositions contain words which, taken in their rigorous sense, would convey a meaning different from that obviously intended. It is essential to a just construction that many words which import something excessive should be understood in a more mitigated sense—in that sense which common usage justifies. The word “necessary” is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison, and is often connected with other words which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases.’ The word ‘necessary,’ considered in connection with the right of the board of supervisors to exercise such powers as are incidentally necessary to enable such board to carry into effect the powers granted, means no more than exercise of such powers as are reasonably required by the exigencies of each case as it arises.”—*Lancaster County v. Green*, 74 N.W. 430, 54 Neb. 98.

N.J.Super.A.D. 1968. Words “necessary and proper” mean appropriate and adapted to carrying into effect given object. R.S. 48:2-14, N.J.S.A.—Petition of Public Service Coordinated Transport, 247 A.2d 888, 103 N.J.Super. 505.—Statut 199.

N.Y.Sup. 1988. Federal law defeating state escheat law with respect to federal income tax refunds was “necessary and proper” exercise of Congress’ undisputed powers to enforce Internal Revenue Code and to administer undeliverable refunds. U.S.C.A. Const. Art. 1, § 8, cl. 10; 26 U.S.C.A. § 6408; *McKinney’s Abandoned Property Law* § 1213 et seq.—*Abrams v. Baker*, 535 N.Y.S.2d 527, 141 Misc.2d 882, on reargument 540 N.Y.S.2d 145, 143 Misc.2d 233, affirmed as modified *Petition of Abrams*, 556 N.Y.S.2d 925, 163 A.D.2d 94, affirmed 570 N.Y.S.2d 468, 77 N.Y.2d 741, 573 N.E.2d 556.—Int Rev 4951.

Okl. 1969. Words “necessary and proper” as used in constitutional provision regarding right of corporations to acquire land do not import that which is indispensably necessary, but do import that which is proper, useful and suitable and thus conducive to accomplishment of purpose of corporation and imply actual need therefor in contradistinction to mere preference. O.S.1961 Const. art. 22, § 2.—*LeForce v. Bullard*, 454 P.2d 297, 1969 OK 14.—Corp 434.

Okl. 1959. Words “necessary and proper” used in constitution as expressive of extent of right of corporation to acquire and hold land do not import that which is indispensably necessary, but do import that which is proper, useful and suitable and thus conducive to accomplishment of purposes of corporation, which implies actual need therefor in contradistinction to mere preference. O.S.1951 Const. art. 22, § 2.—*State ex rel. Reidy v. International Paper Co.*, 342 P.2d 565, 1959 OK 145.—Corp 435(1).

Okl. 1958. In constitutional provision prohibiting any corporation doing business in Oklahoma

from buying, acquiring or trading in real estate except such as shall be necessary and proper for carrying on the business for which corporation was chartered or licensed, the words "necessary and proper" do not import that which is indispensably necessary, but do import that which is proper, useful and suitable and thus conducive to accomplishment of purposes of corporation, which implies actual need therefor in contradistinction to mere preference. O.S.1951 Const. art. 22, § 2.—U. S. Gypsum Co. v. State ex rel. Rutherford, 328 P.2d 431, 1958 OK 180.—Corp 435(1).

Okla. 1947. The words "necessary and proper" used in the Constitution as expressive of the extent of the right of a corporation to acquire and hold lands do not import that which is indispensably necessary, but do import that which is proper, useful and suitable and thus conducive to the accomplishment of the purposes of the corporation, which implies actual need therefor in contradistinction to mere preference. O.S.1941 Const. art. 22, § 2.—Texas Co. v. State ex rel. Coryell, 180 P.2d 631, 198 Okla. 565, 1947 OK 53.—Corp 435(1).

Tex. 1988. District judge's order directing district clerk to mail out trial docket to attorneys with cases pending before district court was "necessary and proper," and judge had authority to hold district clerk in contempt for failing to comply with order. V.T.C.A., Civil Practice & Remedies Code § 7.001(b); V.T.C.A., Government Code §§ 21.001(a), 21.002(d, e); Vernon's Ann. Texas Rules Civ.Proc., Rule 21a; Judicial Administration Rule 7(a)(4).—Ex parte Hughes, 759 S.W.2d 118.—Clerks of C 67; Contempt 20.

NECESSARY AND PROPER DEFENDANT

Ill.App. 1 Dist. 1937. In suit charging fraudulent conversion of plaintiff's stock in casualty company pursuant to conspiracy, wherein plaintiff joined casualty company, alleging that company was continuing to do business in Illinois and that plaintiff was a resident of county in which suit was brought, and seeking recovery of stock converted or damages therefor, venue was properly fixed in county in which suit was brought and in which company was properly served, under statute, since casualty company was a "necessary and proper defendant" because without it plaintiff could not obtain complete relief. S.H.A. ch. 110, §§ 5, 7(2-4), 8(2), 9, 10(1).—Reiter v. Illinois Nat. Cas. Co., 9 N.E.2d 358, 291 Ill.App. 30.—Venue 22(3).

NECESSARY AND PROPER INVESTIGATION

C.C.A.2 (N.Y.) 1935. Proceeding under statute authorizing stop order if registration statement includes untrue statement of material fact or omits material fact constitutes "necessary and proper investigation" within statute authorizing Securities and Exchange Commission to subpoena witnesses (Securities Act §§ 8(d), 19(b), 24, 15 U.S.C.A. §§ 77h(d), 77s(b), 77x).—Jones v. Securities and Exchange Commission, 79 F.2d 617, certiorari denied 56 S.Ct. 497, 297 U.S. 705, 80 L.Ed. 993, certiorari granted 56 S.Ct. 497, 297 U.S. 705, 80

L.Ed. 988, reversed in part 56 S.Ct. 654, 298 U.S. 1, 80 L.Ed. 1015.—Sec Reg 86.

NECESSARY AND PROPER MEANS

Ga. 1965. Provision of Milledgeville charter authorizing city to take all "necessary and proper means" for keeping corporate limits of city free from garbage and trash authorized ordinance providing for city to remove garbage and trash and charge property owners, occupants, tenants and lessees stipulated fees which did not exceed the cost of collecting, removing and disposing of such trash and garbage. Laws 1900, pp. 345, 351, §§ 21, 24.—Mayor and Aldermen of City of Milledgeville v. Green, 145 S.E.2d 507, 221 Ga. 498, opinion conformed to 145 S.E.2d 720, 112 Ga.App. 653.—Mun Corp 607.

NECESSARY AND PROPER PARTIES

Tex.Civ.App.—Dallas 1927. In suit to enjoin threatened prosecutions under alleged invalid penal ordinance governing segregation of white and colored races in city, only "necessary and proper parties" are those threatened with prosecution and those charged by law with duty of instituting prosecutions, so that those who would be damaged by judgment holding ordinance invalid are not necessary parties.—Brice v. City of Dallas, 300 S.W. 970, writ granted, affirmed 12 S.W.2d 541.

Tex.Civ.App.—Galveston 1946. Original trustees residing in Galveston county were "necessary and proper parties" to suit by derivative trustee located in that county, brought under the Declaratory Judgments Act and the Texas Trust Act, involving extension of trust and declaration of powers and duties, so that venue of suit was properly laid in Galveston county, over objection of nonresident defendants by whom pleas of privilege were filed. Vernon's Ann. Civ.St. arts. 1995, subd. 4, 2524-1, §§ 4, 11, 7425b-1 et seq., 7425b-24, subds. A, B.—Arterbury v. U.S. Nat. Bank of Galveston, 194 S.W.2d 803.—Venue 22(7.1).

NECESSARY AND PROPER PARTY

Idaho 1930. Husband is "necessary and proper party" to sue on note belonging to community (C.S. § 4666).—Swager v. Peterson, 291 P. 1049, 49 Idaho 785.—Hus & W 270(5).

Mo. 1942. The statutes granting widower a share in realty and personalty belonging to wife at time of her death did not render widower a "necessary and proper party" in a proceeding for collection of a claim allegedly due deceased wife from estate of her deceased mother. Mo.R.S.A. §§ 94, 323, 324, V.A.M.S. §§ 462.140, 469.070, 469.130.—Niederberg v. Golluber, 162 S.W.2d 592.—Ex & Ad 438(6).

Mo. 1942. A widower, in his individual capacity, was not a "necessary and proper party" to an action to recover for alleged conversion of certain stocks belonging to estate of deceased wife, but the right to recover therefor was vested by statute in administrator. Mo.R.S.A. §§ 63 et seq., 98, V.A.M.S.

§§ 462.400 et seq., 537.010.—*Niederberg v. Golluber*, 162 S.W.2d 592.—Ex & Ad 438(6).

Mo. 1942. Widower, in his individual capacity, was not a "necessary and proper party" to an action to recover for alleged conversion of certain specific personal assets belonging to estate of deceased wife, even though it was alleged that proceeds of sale of such assets were invested in a company and that widower as beneficiary could elect to take such property itself, where petition did not purport to make heirs of deceased wife parties to the proceeding, and did not contain any allegation that assets of estate exceeded its liabilities.—*Niederberg v. Golluber*, 162 S.W.2d 592.—Ex & Ad 438(6).

Mo. 1933. Where answer in proceeding to quiet title, admitted that one defendant held title for benefit of another defendant who was owner of beneficial interest, subject only to wife's marital right, wife was "necessary and proper party."—*Wolfsberger v. Hoppenjon*, 68 S.W.2d 814, 334 Mo. 817.

Mo.App. 1941. Ordinarily, an administrator is a "necessary and proper party" to actions involving the personality of his decedent, but he is in reality a "trustee" for the benefit of creditors, legatees, heirs, and distributees.—*Smith v. Oliver*, 157 S.W.2d 558.

N.Y.A.D. 3 Dept. 1941. The owner of the fee, as well as the tenant, was a "necessary and proper party" in action under Civil Practice Act to recover real property and damages for withholding possession. Civil Practice Act, § 990.—*Stoddard v. Stoddard*, 26 N.Y.S.2d 151, 261 A.D. 315.—Eject 45.

N.Y.A.D. 3 Dept. 1941. In action under Civil Practice Act to recover real property and damages for withholding possession, wherein issue was whether action was commenced within 15 years after date of encroachment, evidence warranted finding that at date of service of summons and complaint upon codefendant, codefendant was owner of property and in possession and was a "necessary and proper party," and that service upon codefendant tolled 15-year statute of limitations, and that action was brought within time prescribed by Civil Practice Act. Civil Practice Act, §§ 34, 990.—*Stoddard v. Stoddard*, 26 N.Y.S.2d 151, 261 A.D. 315.—Lim of Act 197(1).

N.Y.Sur. 1942. In proceeding to determine right of State Tax Commission to payment of transfer tax assessed against deceased's estate prior to adoption of Estate Tax Law, State Tax Commission was a "necessary and proper party" and had right to file objections to account and supplemental account of administrators. Tax Law, § 249 et seq.—*In re Sharp's Estate*, 39 N.Y.S.2d 583, 179 Misc. 470.—Ex & Ad 504(2).

S.C. 1932. In action against former county treasurer for accounting in equity for defalcations and breaches of trust occurring in two terms of office, surety on bond for each term held "necessary and proper party". Code Civ.Proc.1922, § 361 (See Code 1942, § 2422).—*Anderson County v. Griffin*, 161 S.E. 875, 164 S.C. 75.—Counties 101(5).

Tex.Civ.App.—Dallas 1938. Where venue of suit against sureties was laid in a county other than that of their residence or residence of principal obligor, principal obligor was a "necessary and proper party," and on a hearing on pleas of privilege by sureties to be sued in county of their residence, plaintiff, to establish venue as to sureties, was only required to show that principal obligor was indebted to him, for which sureties had obligated themselves in writing to pay debt in county in which suit was brought.—*Mahler v. J. R. Watkins Co.*, 120 S.W.2d 459.—Venue 22(2).

NECESSARY AND PROPER UNIVERSITY FUNCTION

Ohio App. 3 Dist. 1970. Operation of restaurant, cafeteria and snack shop by contract with caterer by public university in its student union was, considering entire operation of school, a "necessary and proper university function" and did not constitute a "use with a view to profit," even though some access between funds which were allocated and those which were taken in was shown; therefore, portions of student union building which were used in connection therewith could not be retained on tax duplicate. R.C. § 5709.07.—*Ohio Northern University v. Tax Commissioner*, 255 N.E.2d 297, 21 Ohio App.2d 113, 50 O.O.2d 214.—Tax 242(2.1).

NECESSARY AND REASONABLY INCIDENTAL

N.Y. 1992. Portions of nonprofit religious corporation's property used for residential purposes were "necessary and reasonably incidental" to the facility's primary religious purpose, notwithstanding limited housing facilities nearby, and, thus, were tax exempt; if corporation could not provide residential housing accommodations to its faculty, staff, students and their families, its primary purpose of providing religious and educational instruction would be seriously undermined. *McKinney's RPTL* § 420-a, subd. 1(a).—*Hapletah v. Assessor of Town of Fallsburg*, 582 N.Y.S.2d 54, 79 N.Y.2d 244, 590 N.E.2d 1182.—Tax 244.

NECESSARY AND REGULAR EXPENSE

Fla. 1933. Expenses of state attorney incurred in transacting official business within his circuit but outside county of his residence held "necessary and regular expense," within statute allotting specified amount for "necessary and regular expense" of judicial department, in view of general legislative policy. Acts 1933, c. 15858, p. 16.—*State ex rel. Parker v. Lee*, 151 So. 491, 113 Fla. 40.—Dist & Pros Attys 5(4).

NECESSARY AND REQUIRED

Tex.Civ.App.—Amarillo 1941. Where plaintiffs conveyed part of their lot to defendant by conveyance granting defendant a right of way easement over driveway on land retained by plaintiffs and reciting that easement should continue as long as necessary and required for ingress and egress to and from garages on rear of conveyed land, and to dispense with easement would compel defendant to move west wall of garages to east side, transfer

garage doors, and build a 26-foot driveway to garages, the easement was “necessary and required” within conveyance, and hence a directed verdict for defendant in suit to cancel easement was proper.—*Scott v. Walden*, 154 S.W.2d 291, reversed 165 S.W.2d 449, 140 Tex. 31, 154 A.L.R. 1.—Ease 37.

NECESSARY AND USEFUL

C.A.8 (Mo.) 1997. Whether activity of prevailing party’s counsel subsequent to entry of judgment is defensive, seeking to preserve relief obtained earlier, or offensive, seeking to augment what has already been approved, is factor in deciding whether postjudgment fees are “necessary and useful” and therefore compensable under § 1988. 42 U.S.C.A. § 1988.—*Jenkins by Jenkins v. State of Mo.*, 127 F.3d 709.—Civil R 301.

NECESSARY APPENDAGES

Mich. 1886. “Necessary appendages,” as used in How. Ann.St. § 5073, subd. 6, authorizing a school director to provide the “necessary appendages” for the schoolhouse, and keep the same in good condition and repair during the time school shall be taught therein, should be construed to include a fence inclosing a schoolhouse site and separating it from adjacent lands. It comes within the same category as a well, woodhouse, etc. The word “appendage” does not necessarily mean simply the school apparatus to be used inside the building, nor can it be limited to such articles as brooms, pails, cups, etc., but must be construed in a broader sense, to include fuel, fences, and necessary out-houses.—*Creager v. Wright School Dist. No. 9*, 28 N.W. 794, 62 Mich. 101.

NECESSARY APPROACHES

Ohio App. 8 Dist. 1932. What are “necessary approaches” to a bridge constructed by county commissioners is a question of fact.—*State ex rel. Schaefer v. Zangerle*, 182 N.E. 644, 43 Ohio App. 30, 37 Ohio Law Rep. 207, 12 Ohio Law Abs. 685.—Bridges 3.

Ohio App. 8 Dist. 1932. Where bond issue was voted by people to pay cost and expenses of erecting a bridge “with the necessary approaches thereto”, county commissioners, in determining meaning of “necessary approaches”, were required to consider character of bridge proper, general territory to be served by bridge, and existing arteries in immediate vicinity thereof, so as to afford fullest use of bridge.—*State ex rel. Schaefer v. Zangerle*, 182 N.E. 644, 43 Ohio App. 30, 37 Ohio Law Rep. 207, 12 Ohio Law Abs. 685.—Bridges 3.

NECESSARY ARTICLE

Mont. 1999. Attorney services may be a “necessary article” under statute making a spouse liable for debts incurred by the other spouse to obtain necessary articles when they are provided to obtain orders of protection from an abusive spouse, thereby obligating that spouse to pay the attorney fees so incurred. MCA 40–2–210.—*Missoula YWCA v. Bard*, 983 P.2d 933, 295 Mont. 260, 1999 MT 177.—Hus & W 19(18).

NECESSARY ARTICLE OF HOUSEHOLD FURNITURE

N.Y.Sup.App.Term 1949. A piano is not a “necessary article of household furniture” within purview of statute exempting from levy and sale by virtue of an execution a “necessary article of household furniture.” Civil Practice Act, § 665, subd. 5.—*Lader v. Gordon*, 88 N.Y.S.2d 758.—Exemp 42.

NECESSARY ARTICLES

Mont. 1999. “Necessary articles”, for which person may be held liable for debt contracted by spouse, encompass things indispensable, or things proper and useful, for the sustenance of human life, and thus include services provided for protection from intimidation, assault and murder. MCA 40–2–210.—*Missoula YWCA v. Bard*, 983 P.2d 933, 295 Mont. 260, 1999 MT 177.—Hus & W 19(14), 19(18).

NECESSARY AS AN EMERGENCY MEASURE

N.Y. 1991. Requirement in justification statute that conduct be “necessary as an emergency measure” contemplates conduct which is not only warranted by circumstances as emergency response but is also reasonably calculated to have actual effect in preventing the harm; ruled out is conduct that is tentative or only advisable or preferable or conduct for which there is reasonable, legal alternative. McKinney’s Penal Law § 35.05, subd. 2.—*People v. Craig*, 578 N.Y.S.2d 471, 78 N.Y.2d 616, 585 N.E.2d 783.—Crim Law 38.

NECESSARY AS AN EMERGENCY MEASURE TO AVOID IMMINENT * * * INJURY

N.Y.Sup. 1984. Witness called in murder prosecution, who had not placed himself in situation of being witness through any criminal activity of his own, and who claimed that his life and lives of his family would be endangered if he gave testimony, but who was not actually threatened in any way by defendant or his associates, who had resided in same neighborhood as defendant for approximately two years while defendant was on bail, and who had refused police protection, failed to show that his failure to testify was “necessary as an emergency measure to avoid imminent * * * injury” or that refusal to testify was “necessary” to avoid injury, and thus, failed to establish “justification” as defense to contempt charge. McKinney’s Penal Law § 35.05, subd. 2.—*People v. Gumbs*, 478 N.Y.S.2d 513, 124 Misc.2d 564.—Witn 292.

NECESSARY ATTENDANCE

D.Puerto Rico 2000. Attendance at trial means necessary attendance, and attendance for purpose of consultation is not “necessary attendance” for purposes of recovering statutory attendance fees. 28 U.S.C.A. § 1821(b).—*Pan American Grain Mfg. Co. v. Puerto Rico Ports Authority*, 193 F.R.D. 26, affirmed 295 F.3d 108.—Witn 24.

NECESSARY BRIDGES

Ark. 1922. The act creating a road improvement district having authorized the commissioners to construct "necessary bridges," which means bridges incident to the main improvement, and not bridges of such magnitude as to constitute of themselves independent improvements, held, that the district's assessment of benefits was not void as embracing bridges, where the bridges embraced were wooden bridges across a creek and a bayou, both nonnavigable, and estimated cost of the bridge was between \$10,000 and \$12,000 which was small in comparison to the estimated cost of the whole improvement; such bridges not being independent improvements.—*Bulloch v. Dermott-Collins Road Imp. Dist.*, 244 S.W. 327, 155 Ark. 176, reversed 44 S.Ct. 457, 265 U.S. 570, 68 L.Ed. 1184.—High 138.

NECESSARY BUSINESS EXPENSE

Ct.Cl. 1978. Classic formulation of what is a deductible "necessary business expense" under Internal Revenue Code section is expenditure that is appropriate and helpful in accomplishment of taxpayer's trade or business, while deductible "ordinary business expense" is identified by reference to expenditures of business community to which taxpayer belongs. 26 U.S.C.A. (I.R.C.1954) § 162(a).—*Clement v. U. S.*, 580 F.2d 422, 217 Ct.Cl. 495, certiorari denied 99 S.Ct. 1214, 440 U.S. 907, 59 L.Ed.2d 455.—Int Rev 3318.

Ct.Cl. 1938. Where it did not definitely appear that taxpayer's participation in syndicate agreement to purchase land for resale was connected with his regular business, attorney's fee paid by taxpayer in litigation to determine extent of his liability under syndicate agreement and to protect his interest in land purchased by syndicate was not a "necessary business expense," but a "capital expenditure," and taxpayer was not entitled to deduction therefor in computing his income tax. Revenue Act 1932, § 23(a), 26 U.S.C.A. § 23(a) (1).—*Vernor v. U.S.*, 23 F.Supp. 532, 87 Ct.Cl. 435.—Int Rev 3329.

C.C.A.2 1947. Taxpayer's payment to settle threatened lawsuit, not made in entire confidence that suit would have failed nor for sole purpose of avoiding damage to credit, reputation, and business generally, was made at least partially to perfect title to property, and hence must be treated as a "capital outlay" which enhanced cost basis of the property for income tax purposes, not as a "necessary business expense". 26 U.S.C.A. (I.R.C.1939) § 23(a)(1).—*Levitt & Sons v. C.I.R.*, 160 F.2d 209.—Int Rev 3318.

C.C.A.2 (N.Y.) 1946. The amount paid by bank president under agreements intended to prevent closing of bank by indemnifying bank against loss through shrinkage of securities, was not deductible from president's gross income as "necessary business expense" or "loss incurred in trade or business" where potential liability which president contracted under agreement had no reasonable business relation to loss which president would have suffered had bank closed. Revenue Act 1936, § 23(a), (e)(1, 2), 26 U.S.C.A.Int.Rev. Acts, page 827.—*Hickey v. Chahoon*, 153 F.2d

107, certiorari denied 66 S.Ct. 1022, 328 U.S. 843, 90 L.Ed. 1617.—Int Rev 3318, 3396.

N.D.N.Y. 1944. Where taxpayer, in order to prevent closing of bank of which he was president and a stockholder from which he received substantial salary and in which he and corporations in which he was vitally interested and from which he received additional salaries had extensive deposits, participated in agreement to indemnify bank against loss through shrinkage in value of securities, amount paid under agreement was deductible from gross income either as "necessary business expense" or "loss incurred in trade or business". Revenue Act 1936, § 23(e), 26 U.S.C.A. (I.R.C.1939) § 23(e).—*Chahoon v. Hickey*, 60 F.Supp. 409, reversed 153 F.2d 107, certiorari denied 66 S.Ct. 1022, 328 U.S. 843, 90 L.Ed. 1617.—Int Rev 3318, 3396.

Miss. 1961. Ordinarily, expense will be considered "necessary business expense" deductible for income tax purposes if expenditure is appropriate and helpful in developing and maintaining taxpayer's business. Code 1942, § 9220-09.—*State v. L. & A. Contracting Co.*, 133 So.2d 546, 241 Miss. 783.—Tax 1037.

NECESSARY BUSINESS EXPENSES

C.A.6 1969. Where prime motivating force behind corporation's board of directors' resolution authorizing payments to widow of chairman of board was not intent that it result in business benefit, but to recognize chairman's long service and outstanding contribution to corporation, payments were not "necessary business expenses", and were not deductible as such in computing corporation's income tax. 26 U.S.C.A. (I.R.C.1954) § 162(a).—*Allen Industries, Inc. v. C.I.R.*, 414 F.2d 983.—Int Rev 3326.

C.A.10 1958. Purchase of whiskey, in violation of Oklahoma law, for entertainment and good will, and payments to county officials and employees to influence performance of their official duties which were, at the very least, against public policy were properly disallowed as "necessary business expenses" since an expense is not "necessary" when there is a severe, immediate and direct frustration of state policy. 37 Okl.St. Ann. § 1; 26 U.S.C.A. (I.R.C.1939) § 23(a)(1)(A).—*Finley v. C.I.R.*, 255 F.2d 128.—Int Rev 3338.

C.A.2 (N.Y.) 1964. Where purpose and effect of legal expenses incurred in prosecution of trademark infringement action was to increase value of taxpayer's registered trademark and to make more secure taxpayer's property in it by forever eliminating possibility of having it impaired by competitive use of confusingly similar mark, legal expenses constituted a "capital expenditure" and were not deductible as "necessary business expenses". 26 U.S.C.A. (I.R.C. 1954) § 162(a).—*Danskin, Inc. v. C. I. R.*, 331 F.2d 360.—Int Rev 3327.

NECESSARY CARE

N.D.Cal. 1983. "Necessary care" implies that care is in some degree beneficial to patient, and

fact that Food and Drug Administration has not approved treatment does not automatically mean that treatment is worthless; thus, policy language, "essential to the necessary care and treatment" could not, ipso facto, be equated with Food and Drug Administration approval.—*McLaughlin v. Connecticut General Life Ins. Co.*, 565 F.Supp. 434.—Insurance 2481.

Wash. 1991. "Necessary care" which parent is required by statute to provide for defendant child is that minimum standard of quality and quantity of food, clothing, shelter and medical care that parent is required by law to furnish. West's RCWA 26.20.035(1)(a, b).—*State v. Howe*, 805 P.2d 806, 116 Wash.2d 466.—Child S 100, 113.

NECESSARY CHANGES

N.Y.A.D. 3 Dept. 1922. Where a contract made in pursuance of Laws 1903, c. 147, between the state and a contractor, for constructing a canal, provided that the state should have the right to make such additions to or changes in plans and specifications covering the work as might be necessary, alteration of the contract, substituting a concrete lining for a puddle lining in the bottom of the canal, and concrete retaining walls for pile docking on the sides of the canal, eliminating puddle lining in certain places, raising the grade of a by-pass channel around a lock, and changing the specifications for crushed stone to be used in the concrete, were within the reasonable terms of the contract, as being "necessary changes," by which are meant such changes as are reasonably required in the judgment of competent men to accomplish lastingly the purpose of the act for constructing the canal.—*Ferguson Contracting Co. v. State*, 195 N.Y.S. 901, 202 A.D. 27, modified *Olcott v. State*, 196 N.Y.S. 942, 203 A.D. 837, affirmed 142 N.E. 580, 237 N.Y. 186.—Canals 15.

NECESSARY CHARGE

Mass. 1903. A vote of a town required the selectmen to insert in any franchise granted a street railway company certain conditions enumerated as to the rails to be laid, and the portion of the street to be paved, and required the company to employ resident laborers at uniform wages, and that there should be but one fare of five cents to any point in another town. A second vote provided for a committee to confer with the selectmen, or independently attend and represent the town on all questions of franchises, etc., to be granted to any street railway company, which committee was authorized to employ counsel, and a third vote instructed the treasurer to borrow \$300 to carry the second vote into effect. Held, that the three votes must be construed as a whole, and as, in several of the conditions the town had no corporate interest, the scheme as a whole did not constitute a "necessary charge," within Rev.Laws, c. 25, § 15, authorizing town officers to appropriate money for necessary charges arising in the town.—*Flood v. Leahy*, 66 N.E. 787, 183 Mass. 232.—Towns 46(1).

Mass. 1899. Expenses of a committee to attend a convention of American municipalities is not a

"necessary charge" within Pub.St. c. 27, § 10, authorizing towns to appropriate money for certain purposes, and for all other necessary charges arising in such towns.—*Waters v. Bonvouloir*, 52 N.E. 500, 172 Mass. 286.

N.H. 1914. Where a town covenants to pay taxes levied on town lands leased to plaintiff, or to permit deduction of taxes so paid from the rent, and plaintiff, being compelled to pay taxes greater in amount than the annual rent, sued the town therefor, such liability constituted a "necessary charge" arising within the town, for which the town might be made liable.—*Hampton Beach Improvement Co. v. Town of Hampton*, 92 A. 549, 77 N.H. 373, L.R.A. 1915C, 698.

NECESSARY CHARGES

Mass. 1899. Under Pub.St. c. 27, § 10, authorizing towns to appropriate money for certain purposes, "and for all other necessary charges arising in such town," a town cannot appropriate money to pay expenses of a committee to attend a convention of American Municipalities, since such expenses are not "necessary charges."—*Waters v. Bonvouloir*, 52 N.E. 500, 172 Mass. 286.—Mun Corp 860.

N.H. 1969. "Necessary charges" are those which law requires towns to pay, rather than those which voters may in their discretion consider to be necessary charges. RSA 31:4.—*Spurgias v. Morrisette*, 249 A.2d 685, 109 N.H. 275.—Towns 46(1).

Wash. 1917. Taxes upon mortgaged property are "necessary charges" and "current expenses" properly chargeable against the income of the property.—*Newman v. Van Nortwick*, 164 P. 61, 95 Wash. 489.—Mtg 473.

NECESSARY COMFORTS OF LIFE

Wis. 1886. "Necessary comforts of life," as used in Const. art. 1, § 17, providing that the privilege of the debtor to enjoy the "necessary comforts of life" shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability, should be construed to include a home. It is one of the necessary comforts of life in the enjoyment of which the Legislature was required to protect every debtor.—*Binzel v. Grogan*, 29 N.W. 895, 67 Wis. 147.

NECESSARY COMPLAINANT

Tenn. 1952. Comptroller was not "necessary complainant" in statutory action by County Judge to recover shortages in public funds. Code, § 1657.—*Smith v. State ex rel. Thomas*, 250 S.W.2d 55, 194 Tenn. 155.—Offic 111.

NECESSARY CONFINEMENT WITHIN DOORS

W.Va. 1934. "Necessary confinement within doors" because of illness does not, within health and accident policy, mean an absolute and indubitable constraint, but a practical and intelligent "staying in," the nature of the illness considered.—*Wade v. Mutual Ben. Health & Acc. Ass'n*, 177 S.E. 611, 115 W.Va. 694.

NECESSARY CONNECTING LINK

W.Va. 1951. Bridge over river which together with its approaches, was wholly within corporate limits of town having no state roads within it, and which was a part of county-district road system, did not constitute a "necessary connecting link" between state roads on east side of river and state roads on west side, within statute providing that any existing free bridge forming connecting link between two counties or two state routes was adopted as part of state road system and should be maintained by state. Acts 1933, 1st Ex.Sess. c. 40, art. 4, § 26 as amended by Acts 1945, c. 111.—State ex rel. Robertson v. State Road Commission, 64 S.E.2d 28, 135 W.Va. 562.—Bridges 4, 21(1).

NECESSARY, CONVENIENT OR USEFUL

Ark. 1977. Statute authorizing water district to construct, purchase, lease, or acquire machinery, supplies, facilities, and transportation and distribution lines which are "necessary, convenient or useful" did not give the water district the right to construct its own electric power line from its plant within one power company's certified territory into the certified territory of another power company and to then purchase electricity from the second power company. Ark.Stats. § 21-1408(3).—Southwestern Elec. Power Co. v. Carroll Elec. Co-op. Corp., 554 S.W.2d 308, 261 Ark. 919.—Electricity 8.1(2.1).

NECESSARY COST

Bkrtcy.S.D.Iowa 1988. In determining whether creditor can be charged with certain expense as "necessary cost" of preserving its collateral, court may consider whether collateral could have been abandoned and allow debtor to recover expenses only from date bankruptcy petition was filed to date property could have been abandoned. Bankr.Code, 11 U.S.C.A. § 506(c).—Matter of Hunerdosse, 85 B.R. 999.—Bankr 2854(1).

NECESSARY COST AND EXPENSE OF PRESERVING ESTATE

C.A.10 (Okla.) 1988. In deciding whether bonus was earned postpetition, so as to be entitled to administrative priority as "necessary cost and expense of preserving estate," crucial consideration is not when obligation to pay balance arose, but what consideration supports bonus and whether such consideration, or any portion thereof, was employee's prepetition services. Bankr.Code, 11 U.S.C.A. § 503(b)(1)(A).—In re Amarex, 853 F.2d 1526.—Bankr 2871.

NECESSARY COST AND EXPENSE OF PRESERVING THE ESTATE

Bkrtcy.M.D.Fla. 2001. That which is actually utilized by trustee in operation of debtor's business is "necessary cost and expense of preserving the estate," and should be accorded priority as administrative expense; however, expense which is merely thought to have some potential benefit, in that it makes business more likely salable, cannot be accorded such priority. Bankr.Code, 11 U.S.C.A.

§§ 503(b)(1)(A), 507(a)(1).—In re Right Time Foods, Inc., 262 B.R. 882.—Bankr 2871.

NECESSARY COST OR DISBURSEMENT

Idaho 1906. If a witness can recover compensation from the litigant who procured his attendance, the sum so paid would undoubtedly be a "necessary cost or disbursement" in the action.—Anderson v. Ferguson-Bach Sheep Co., 86 P. 41, 12 Idaho 418, 10 Am. Ann. Cas. 395.

NECESSARY COSTS

Bkrtcy.N.D.Ill. 1996. "Necessary costs" are those that are unavoidably incurred in preservation or disposal of secured property. Bankr.Code, 11 U.S.C.A. § 506(c).—In re Lunan Family Restaurants Ltd. Partnership, 192 B.R. 173.—Bankr 2854(1).

Mich. 1985. As used in constitutional provision prohibiting reduction of state funding of necessary costs of activities or services required of local government by state law [M.C.L.A. Const. Art. 9, § 29], "necessary costs" means essential or indispensable costs, rather than merely useful or beneficial costs.—Durant v. State Bd. of Educ., 381 N.W.2d 662, 424 Mich. 364, on remand 463 N.W.2d 461, 186 Mich.App. 83, remanded 498 N.W.2d 736, 441 Mich. 930, on remand 513 N.W.2d 195, 203 Mich.App. 507, appeal denied 519 N.W.2d 898, 445 Mich. 919, reconsideration denied 522 N.W.2d 633, opinion after remand 541 N.W.2d 278, 213 Mich. App. 500, appeal denied 554 N.W.2d 312, 453 Mich. 892, order vacated on reconsideration 557 N.W.2d 309, 453 Mich. 952, appeal granted 557 N.W.2d 309, 453 Mich. 952, affirmed in part—States 123.

Mich.App. 1990. To ascertain what constitutes "necessary costs" for purposes of Headlee Amendment prohibition on reduction of state-financed proportion of necessary costs of activities or services required of local government by state law, trier of fact must first determine the "total costs" incurred by a school district in providing the required service or activity, including costs reimbursed by federal funding; once total costs have been determined, trier of fact must ascertain what portion of those costs were "necessary" by ascertaining the net costs of the service or activity provided by the local government; "net costs" are the actual costs that would be incurred by the state if the state were to provide the service or activity itself, and the measure of actual costs is to be determined by the pressures of the market place; after ascertaining necessary costs, trier of fact must ascertain the total amount of categorical aid received for that service or activity in the district and divide categorical aid by the total necessary costs; the percentage arrived at constitutes the "state financed portion of the necessary costs." M.C.L.A. Const. Art. 9, § 29.—Durant v. Department of Educ., 463 N.W.2d 461, 186 Mich.App. 83, remanded 498 N.W.2d 736, 441 Mich. 930, on remand 513 N.W.2d 195, 203 Mich.App. 507, appeal denied 519 N.W.2d 898, 445 Mich. 919, reconsideration denied 522 N.W.2d 633, opinion after remand 541 N.W.2d

278, 213 Mich.App. 500, appeal denied 554 N.W.2d 312, 453 Mich. 892, order vacated on reconsideration 557 N.W.2d 309, 453 Mich. 952, appeal granted 557 N.W.2d 309, 453 Mich. 952, affirmed in part 563 N.W.2d 646, 454 Mich. 1219, affirmed—States 111, 123.

Mich.App. 1983. For purposes of state aid to schools, "necessary costs" were to be taken as those essential to completion of intended purpose of state-mandated activity, and they were to be taken as actual cost to the state, were it to provide the activity or service required of local units of government. M.C.L.A. Const. Art. 9, § 29; M.C.L.A. §§ 21.233(6), 388.1601 et seq., 388.1743.—*Durant v. Department of Educ.*, 342 N.W.2d 591, 129 Mich. App. 517, affirmed in part, reversed in part 381 N.W.2d 662, 424 Mich. 364, on remand 463 N.W.2d 461, 186 Mich.App. 83, remanded 498 N.W.2d 736, 441 Mich. 930, on remand 513 N.W.2d 195, 203 Mich.App. 507, appeal denied 519 N.W.2d 898, 445 Mich. 919, reconsideration denied 522 N.W.2d 633, opinion after remand 541 N.W.2d 278, 213 Mich. App. 500, appeal denied 554 N.W.2d 312, 453 Mich. 892, order vacated on reconsideration 557 N.W.2d 309, 453 Mich.—*Schools* 19(1).

NECESSARY COSTS AND EXPENSES

N.D.Ill. 1992. Estate's income taxes constitute "necessary costs and expenses" incurred in enhancing estate by its postpetition taxable gains, for purpose of provision of Bankruptcy Act of 1898 according first priority to costs and expenses of administration, including actual and "necessary costs and expenses" of preserving estate subsequent to filing of petition. Bankr.Act, § 64(a)(1), 11 U.S.C.(1976 Ed.) § 104(a)(1).—*U.S. for Use of I.R.S. v. Quid*, 138 B.R. 881, affirmed *Matter of Luster*, 981 F.2d 277.—*Bankr* 2874.

NECESSARY COSTS OF RESPONSE

U.S.Wash. 1994. Litigation-related attorney fees for prosecuting private response recovery action against Air Force were not recoverable "necessary costs of response" under CERCLA, as "enforcement activities" do not encompass private party's action to recover cleanup costs from other potentially responsible parties (PRP); relevant provisions of CERCLA do not expressly mention recovery of such fees, and Congress' inclusion of two express fee awards provisions elsewhere in CERCLA amendments, and its omission of similar provision in either of two sections that expressly authorize contribution claims, strongly suggested deliberate decision not to authorize such awards in private cost recovery action. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101(25), 107(a)(4)(B), 113, as amended, 42 U.S.C.A. §§ 9601(25), 9607(a)(4)(B), 9613.—*Key Tronic Corp. v. U.S.*, 114 S.Ct. 1960, 511 U.S. 809, 128 L.Ed.2d 797, on remand 30 F.3d 1105.—*Environ Law* 446, 720(2).

D.Md. 1993. Site investigation conducted by owners of former manufactured gas plant site and adjacent property at which constituent elements of coal-tar and other hazardous wastes were present

constituted "necessary costs of response" under CERCLA, despite facts that investigation was performed to further owners' litigation interests, that owners declined invitation of former plant site owner to delay their investigation until former owner conducted its own investigation, and that owners investigated only for purpose of confirming presence of coal-tar. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 107(a)(2), (a)(4)(B), 42 U.S.C.A. § 9607(a)(2), (a)(4)(B).—*HRW Systems, Inc. v. Washington Gas Light Co.*, 823 F.Supp. 318.—*Environ Law* 446.

E.D.N.Y. 1993. Attorney fees are not "necessary costs of response" to release or threatened release of hazardous substances and, therefore, are not recoverable under CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101(25), 107(a)(4)(B), 42 U.S.C.A. §§ 9601(25), 9607(a)(4)(B).—*Allied Princess Bay Co. No. 2 v. Atochem North America, Inc.*, 855 F.Supp. 595.—*Environ Law* 720(2).

D.R.I. 1989. Private litigants could not recover punitive damages under statute governing liability and compensation for pollution under the Comprehensive Environmental Response, Compensation, and Liability Act, in action to recover for alleged improper disposal of hazardous waste; although the statute permits private party to recover response costs, only the United States, state, or an Indian tribe may sue for damages for injury to natural resources, and punitive damages are not "necessary costs of response." Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101 et seq., 107, 107(a)(4)(B), 42 U.S.C.A. §§ 9601 et seq., 9607, 9607(a)(4)(B).—*Regan v. Cherry Corp.*, 706 F.Supp. 145.—*Environ Law* 446, 457.

NECESSARY COSTS OF RESPONSE ACTIVITY

Mich.App. 1998. The phrase "necessary costs of response activity," as used in the Michigan Environmental Response Act's (MERA) private party cost recovery provision, means those response activity costs that are "required" in remediating a contaminated site to protect the public health, safety, or welfare, or the environment, or the natural resources; as so defined the kinds or types of response activity costs that are necessary in remediating a contaminated site cover a wide range of activities, including evaluation, interim response activity, remedial action, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment, or the natural resources. M.C.L.A. §§ 299.603(aa), 299.612(2)(b) (Repealed).—*City of Port Huron v. Amoco Oil Co., Inc.*, 583 N.W.2d 215, 229 Mich.App. 616, appeal granted 603 N.W.2d 266, 461 Mich. 873, vacated 610 N.W.2d 548, leave to appeal denied 610 N.W.2d 548.—*Environ Law* 446.

NECESSARY COURT PROCESS

N.Y.Sup. 1977. Phrase "necessary court process" within statutes regulating banks' recovery of expenditures in making collections was not limited to securing judgments, ignoring legal procedures

sometimes necessary to successful collection litigation. Banking Law § 108, subs. 4(c)(iii), 5(e)(iii).—*Wasserbauer v. Marine Midland Bank—Rochester*, 400 N.Y.S.2d 979, 92 Misc.2d 388.—*Banks* 187.

NECESSARY DEFENDANT

N.Y.A.D. 2 Dept. 1991. Alleged tenant was not “necessary defendant” in action to foreclose mortgage, absent evidence establishing that she was tenant or held any other interest in subject property; mere assertion that she owned adjacent parcel and maintained greenhouse and cultivated trees on property did not support finding that she was tenant in possession. *McKinney’s RPAPL* § 1311, subd. 1.—*Bowery Sav. Bank v. Harbert Offset Corp.*, 571 N.Y.S.2d 506, 174 A.D.2d 645.—*Mtg* 434.

N.Y.Sup. 1938. In suit to foreclose a tax lien, a junior tax lienor was a “necessary defendant.”—*Dot Mort Holding Corp. v. Larpeg Realty Corp.*, 3 N.Y.S.2d 123, 167 Misc. 242.—*Tax* 708(3).

NECESSARY DELAY

Cal.App. 2 Dist. 1969. When several arrested persons are jointly suspected of involvement in same crime, a reasonable delay in arraignment in order to evaluate case against each of them would appear to qualify as “necessary delay” within meaning of Penal Code. *West’s Ann.Pen.Code*, § 825.—*People v. King*, 76 Cal.Rptr. 145, 270 Cal.App.2d 817.—*Crim Law* 228.

Colo. 1983. Under rule requiring peace officer making arrest to take arrested person without unnecessary delay before nearest available county or district judge, “necessary delay” is one reasonably related to administrative process attendant upon arrest of accused and such delays are usually associated with fingerprinting, photographing, taking inventory of personal belongings, preparation of necessary charging documents and reports, and other legitimate administrative procedures; where, however, delay is occasioned by decision of law enforcement officers to conduct custodial interrogation of defendant before presenting him to judicial officer for proper advisement of rights, then clearly such delay is not “necessary delay.” *Rules Crim.Proc.*, Rule 5(a).—*People v. Raymer*, 662 P.2d 1066.—*Arrest* 70(2).

Colo. 1980. For purposes of rule requiring that arrested person be taken without unnecessary delay before nearest available county or district judge, a “necessary delay” is one reasonably related to administrative process attendant on arrest of accused, such as delays associated with fingerprinting, photographing, taking inventory of personal belongings, preparation of necessary charging documents and reports and other legitimate administrative procedures. *Colo.R.Crim.P. Rule* 5(a)(1, 2).—*People v. Heintze*, 614 P.2d 367, 200 Colo. 248.—*Arrest* 70(2).

Colo.App. 2001. A “necessary delay,” for purposes of determining whether an accused’s right to a speedy first appearance for proper advisement of

rights has been violated, is one reasonably related to the administrative process attendant upon the arrest of an accused; such delays are usually associated with fingerprinting, photographing, taking inventory of personal belongings, preparing necessary charging documents and reports, and other legitimate administrative procedures. *Rules Crim.Proc.*, Rule 5.—*People v. Roybal*, 55 P.3d 144, rehearing denied, and certiorari denied.—*Arrest* 70(2).

Colo.App. 2001. Where a delay in presenting an accused to a judicial officer for a proper advisement of rights is occasioned by the decision of law enforcement officers to conduct a custodial interrogation of the defendant, such a delay is not a “necessary delay” within the meaning of rule requiring such presentation. *Rules Crim.Proc.*, Rule 5(a).—*People v. Roybal*, 55 P.3d 144, rehearing denied, and certiorari denied.—*Arrest* 70(2).

Pa. 1978. For purposes of rule prohibiting admission of evidence obtained during a period of “unnecessary delay” between arrest and arraignment if such evidence was reasonably related to the unnecessary delay, a reasonable delay attributable to waiting for parents of juvenile defendant prior to obtaining waiver of juvenile defendant’s *Miranda* right is “necessary delay.” (Per O’Brien, J., with one Justice concurring and two Justices concurring in result.)—*Com. v. Lawson*, 386 A.2d 509, 478 Pa. 200.—*Crim Law* 412.1(3).

NECESSARY DEVIATION

Ariz.App. Div. 1 2002. Railroad track that exited state and passed over adjoining state’s territory by geographical necessity before returning to state was not a necessary deviation, for purposes of determining whether apportionment of state’s transaction privilege taxes on railroad was required under commerce clause; a “necessary deviation” would exist only if an existing intrastate route was interrupted and the only available detour passed through the territory of another state. *U.S.C.A. Const. Art. 1, § 8, cl. 3; A.R.S. § 42-5062, subd. A.*—*Southern Pacific Transp. Co., Inc. v. State, Dept. of Revenue*, 44 P.3d 1006, 202 Ariz. 326.—*Carr* 8; *Commerce* 74.20.

NECESSARY DISBURSEMENT

Nev. 1963. Term “necessary disbursement” within statute permitting prevailing defendant to recover his costs and necessary disbursement occurs when original deposition of party, or witness who is not a party, is filed with court, and is published during trial and used therein, either as direct evidence to impeach or contradict testimony of deponent as witness, or to refresh recollection of witness. *N.R.S. 18.010; NRCP* 26(a, d, e), 30, 35.—*Maxwell v. Amaral*, 383 P.2d 365, 79 Nev. 323.—*Costs* 154.

Utah 2001. The cost to prepare poster-board exhibits depicting statutes and portions of pleadings was not a “necessary disbursement” and was not recoverable. *Rules Civ.Proc.*, Rule 54(d).—*Beaver v. Qwest, Inc.*, 31 P.3d 1147, 2001 UT 81.—*Costs* 190.

NECESSARY DISBURSEMENTS

Cal. 1938. The term “costs” means those fees and charges which are required by law to be paid to the courts, or some of their officers, or the amount of which is expressly fixed by law, and the words “necessary disbursements” should be similarly construed. Code Civ.Proc. §§ 1032, 1033.—*Moss v. Underwriters’ Report*, 83 P.2d 503, 12 Cal.2d 266.—Costs 146, 169.

Cal. 1938. The inclusion of “necessary disbursements” in the statute requiring one who claims costs to file a memorandum of them does not authorize a litigant to collect from his unsuccessful adversary the amount of any expense which is not allowable as an item of “costs.” Code Civ.Proc. §§ 1032, 1033.—*Moss v. Underwriters’ Report*, 83 P.2d 503, 12 Cal.2d 266.—Costs 169.

Cal.App.1 Dist. 1942. Under the Code section relating to costs, the term “costs” means those fees and charges which are required by law to be paid to the courts or some of their officers, the amount of which is expressly fixed by law, and the inclusion of the term “necessary disbursements” in the section requiring one who claims costs to file a memorandum of them does not authorize a litigant to collect from his unsuccessful adversary the amount of any expense which is not allowed as an item of costs. West’s Ann.Code Civ.Proc. § 1032.—*Hoge v. Lava Cap Gold Mining Corporation*, 130 P.2d 470, 55 Cal.App.2d 176.

N.Y.Super. 1894. “Necessary disbursements,” as used in Code, § 3256, providing that a party to whom costs are awarded in an action is entitled to his necessary disbursements, means such as the parties are compelled to make or incur incident to the regular proceedings in the action, and to bring it to trial according to the course and practice of the court.—*Kohn v. Manhattan Ry. Co.*, 59 N.Y.St. Rep. 34, 28 N.Y.S. 663, 8 Misc. 421.

S.C. 1899. Traveling expenses incurred by plaintiffs in a creditors’ suit in attending court cannot be taxed as “necessary disbursements.”—*Putney v. McDow*, 32 S.E. 67, 54 S.C. 172.—*Debtor & C* 11.

Wash.App. Div. 1 1999. Attorney fees incurred by employee who was prevailing party on hostile environment sexual harassment claim under civil rights law did not constitute “necessary disbursements,” within meaning of civil procedure statute requiring requests for necessary disbursements to be filed within ten days of the judgment. West’s RCWA 4.84.090, 49.60.030(2).—*Steele v. Lundgren*, 982 P.2d 619, 96 Wash.App. 773, review denied 994 P.2d 846, 139 Wash.2d 1026.—*Civil R* 455.

Wis. 1907. St.1898, § 2921 (W.S.A. 271.04), authorizes the recovery of “necessary disbursements,” and section 2928 (W.S.A. 271.11) declares that, when there are charges in a bill of costs for attendance of witnesses or copies or exemplifications of documents or papers, such charges for copies shall not be taxed without an affidavit that the copies were actually and necessarily used or necessarily obtained for use, or unless they shall appear to have been necessary and reasonable in amount.

Held, that the words “documents or papers” did not include a copy of testimony taken before a referee, claimed by plaintiff’s attorneys to have been necessary to enable them to argue the case before the referee, and hence plaintiff was not entitled to charge for such copy as a necessary disbursement.—*Wisconsin Sulphite Fibre Co. v. D. K. Jeffris Lumber Co.*, 111 N.W. 237, 132 Wis. 1.—Costs 182.

NECESSARY DISBURSEMENTS AND FEES

Wis.App. 2000. Sheriff’s fees for serving an order to produce a defendant from prison or jail for court appearances, and travel costs, are “necessary disbursements and fees” of officers, and thus are costs taxable against defendant. W.S.A. 973.06(1)(a).—*State v. Dismuke*, 617 N.W.2d 862, 238 Wis.2d 577, 2000 WI App 198, review granted 621 N.W.2d 628, 239 Wis.2d 771, 2001 WI 1, reversed 628 N.W.2d 791, 244 Wis.2d 457, 2001 WI 75.—Costs 309.

NECESSARY EFFECT

Md.App. 2000. A nol pros will have the “necessary effect” of evading speedy trial statute and rule only when the alternative to the nolle prosequi would have been a dismissal with prejudice for noncompliance. Code 1957, Art. 27, § 591; Md. Rule 4-271.—*Baker v. State*, 745 A.2d 1142, 130 Md.App. 281.—*Crim Law* 577.14.

Md.App. 2000. Possibility that the state could have postponed trial, rather than entering a nolle prosequi, negated the conclusion that the nol pros, ipso facto, had the “necessary effect” of circumventing the speedy trial statute and rule that effectively required trial on the original child abuse charge within nineteen days of the dismissal; thus, a new and independent 180-day time period began to run with respect to new and identical child abuse charges. Code 1957, Art. 27, § 591; Md. Rule 4-271.—*Baker v. State*, 745 A.2d 1142, 130 Md. App. 281.—*Crim Law* 577.14.

Md.App. 2000. A mere cause and effect relationship between a nol pros and expiration of the 180-day period of the speedy trial statute and rule does not establish that the nolle prosequi had the “necessary effect” of circumventing the statute and rule; Court of Special Appeals looks from a potential cause forward and asks not whether the feared effect is a predictable possibility, but whether it is, as of that moment, already a foregone conclusion—a necessary effect, an unavoidable consequence, a virtual inevitability. Code 1957, Art. 27, § 591; Md. Rule 4-271.—*Baker v. State*, 745 A.2d 1142, 130 Md.App. 281.—*Crim Law* 577.14.

NECESSARY EQUIPMENT

N.C. 1937. County board of education held without authority to construct and maintain teacherage in connection with rural consolidated schools, since teacherage is not included in statute authorizing “school houses” and their “necessary equipment”. Code 1935, § 1334(8).—*Denny v. Mecklenburg County*, 191 S.E. 26, 211 N.C. 558.—*Schools* 65.

NECESSARY EXPENDITURE

Wash. 1940. An expenditure by county which had exceeded its constitutional and statutory debt limit, for light and power for court house, was a "necessary expenditure" and could be funded under the county budget law. Rem.Rev.Stat. §§ 3997-1 to 3997-10, 5605; Const. art. 8, § 6.—Raynor v. King County, 97 P.2d 696, 2 Wash.2d 199.—Counties 150(2).

Wash. 1940. An expenditure by county which had exceeded its statutory debt limit, for prosecuting attorney, was a "necessary expenditure" and could be funded under the county budget law. Rem.Rev.Stat. §§ 3997-1 to 3997-10, 5605; Const. art. 8, § 6.—Raynor v. King County, 97 P.2d 696, 2 Wash.2d 199.—Counties 150(2).

Wash. 1940. An expenditure by county which had exceeded its constitutional and statutory debt limit, for gasoline, oil and automobile expense for sheriff's office, was a "necessary expenditure" which could be funded under the county budget act. Rem.Rev.Stat. §§ 3997-1 to 3997-10, 5605; Const. art. 8, § 6.—Raynor v. King County, 97 P.2d 696, 2 Wash.2d 199.—Counties 150(2).

Wash. 1940. An expenditure by county which had exceeded its constitutional and statutory debt limit, for an industrial insurance investigation, was neither a "mandatory expenditure" nor "necessary expenditure" which could be funded under the county budget law. Rem.Rev.Stat. §§ 3997-1 to 3997-10, 5605; Const. art. 8, § 6.—Raynor v. King County, 97 P.2d 696, 2 Wash.2d 199.—Counties 150(2).

Wash. 1940. An expenditure by county which had exceeded its constitutional and statutory debt limit, for office furniture and safe, for the purchasing and property department, was not a "necessary expenditure" under the evidence, and could not be funded under the county budget law. Rem.Rev.Stat. §§ 3997-1 to 3997-10, 5605; Const. art. 8, § 6.—Raynor v. King County, 97 P.2d 696, 2 Wash.2d 199.—Counties 150(2).

Wash. 1940. All expenditure by county which had exceeded its statutory and constitutional debt limit, for supplies and traveling expenses of assessor's office, after effective date of the act dealing with social security and division of public assistance, in connection with a W. P. A. project, could be funded under the county budget act on the theory that it was either a "mandatory expenditure" or a "necessary expenditure." Rem.Rev.Stat. §§ 3997-1 to 3997-10, 5605; Const. art. 8, § 6; Laws 1937, p. 697.—Raynor v. King County, 97 P.2d 696, 2 Wash.2d 199.—Counties 150(2).

NECESSARY EXPENDITURES

Cl.Ct. 1989. Costs associated with Kentucky's payment of fees for court-appointed guardians ad litem in paternity cases involving minor putative fathers were "necessary expenditures" that could be reimbursed by federal Government under child support enforcement program of Department of Health and Human Services; federal program

could not operate in Kentucky if guardians ad litem were not appointed for minor putative fathers, and costs were at core of cases to establish paternity and to enforce support obligations. Social Security Act, §§ 451-457, as amended, 42 U.S.C.A. §§ 651-667.—Com. of Ky. ex rel. Cabinet for Human Resources v. U.S., 16 Cl.Ct. 755.—U S 82(2).

NECESSARY EXPENSE

C.A.Fed. 1990. To satisfy requirement of being "necessary expense," expenditure must only be appropriate and helpful to development of taxpayer's business. 26 U.S.C.A. § 162(a).—Danville Plywood Corp. v. U.S., 899 F.2d 3.—Int Rev 3318.

C.C.A.2 1944. For purpose of determining whether an expense to avoid feared damage to credit, reputation and business generally because of threatened suit is deductible in computing income tax as a "necessary expense", necessary only means necessary, if reasonable expectation proves well grounded. Revenue Act 1938, § 23(a)(1), 26 U.S.C.A. (I.R.C.1939) § 23(a)(1).—Levitt & Sons v. Nunan, 142 F.2d 795, on remand 1945 WL 211, affirmed 160 F.2d 209.—Int Rev 3327.

C.C.A.3 1929. Part of bonus on net profits, not determinable until end of five-year contract period, held not deductible before end of period; "necessary expense." Under five-year employment contract, expiring January 31, 1923, providing, in addition to other compensation, for payment of a 2 per cent. bonus based on final net profits of entire contract period in excess of a specified amount, which bonus could not be accurately computed and was not payable until expiration of contract period, Commissioner of Internal Revenue properly disallowed claimed deduction of certain part of such bonus as an ordinary and "necessary expense" of corporate employer's business for 1920 and 1921, notwithstanding said taxpayer kept its books and made its return on the accrual basis.—Kaufman Department Stores v. Commissioner of Internal Revenue, 34 F.2d 257.—Int Rev 3372.1.

C.C.A.1 (Puerto Rico) 1943. Where deed contained provision for reconveyance to grantor upon happening of certain condition, upon happening of the condition, grantor's successors in interest, before being entitled to reconveyance, were not required to pay as a "necessary expense" within the statute the amount expended by grantees to redeem property from tax sale. Civ.Code Puerto Rico 1930, § 382.—Baetjer v. Garzot, 136 F.2d 453.—Deeds 168.

C.C.A.5 (Tex.) 1939. Where trustee in bankruptcy terminated lease of premises occupied by bankrupt, after selling bankrupt's merchandise and moving fixtures so that they occupied only a portion of the building, and made repeated offers to surrender the premises and put lessor in possession, and lessor refused all such offers but obtained possession without delay after securing another tenant, trustee was not liable for the full rental value of the premises as "necessary expense" of administration, in absence of showing that offers of immediate possession were not made in good faith. Bankr.

Act, § 62, 11 U.S.C.A. § 102.—*Crook v. Zorn*, 100 F.2d 792, certiorari denied 59 S.Ct. 833, 307 U.S. 630, 83 L.Ed. 1513.—*Bankr* 2876.

C.C.A.5 (Tex.) 1939. "Necessary expense" of administration of bankrupt's estate, within terms of statute authorizing payment of such expense from the estate, is the cost of preserving the property, and the full rental value of building in which bankrupt's property is stored would have very little weight in determining amount of "necessary expense" of storage. *Bankr. Act* § 62, 11 U.S.C.A. § 102.—*Crook v. Zorn*, 100 F.2d 792, certiorari denied 59 S.Ct. 833, 307 U.S. 630, 83 L.Ed. 1513.—*Bankr* 2876.

Bkrcy.D.Idaho 1995. Absent showing that life insurance is required by law, life insurance premium is not "necessary expense," that can be excluded from disposable income for purposes of confirmation of Chapter 13 plan. *Bankr. Code*, 11 U.S.C.A. § 1325(b).—*In re Smith*, 187 B.R. 678, vacated 207 B.R. 888.—*Bankr* 3705.

Bkrcy.N.D.Ill. 1996. For fee application purposes, "necessary expense" is one that was incurred because it was required to accomplish proper representation of client. *Bankr. Code*, 11 U.S.C.A. § 330.—*In re Spanjer Bros., Inc.*, 191 B.R. 738.—*Bankr* 3159.

Cust.Ct. 1959. Retention by the Argentine government of 15% of the purchase price paid by the buyer for merchandise exported from Argentina which retention the Argentine government under its decrees for control of imports and foreign exchange required as a condition precedent to licensing and exportation of the merchandise was a "necessary expense" from the place of shipment to the place of delivery allowable as a deduction in computing United States value under the Tariff Act. Tariff Act of 1930, § 402(a)(d-f) as amended 19 U.S.C.A. § 1402(d-f).—*International Packers, Limited v. U S*, 171 F.Supp. 854.—*Cust Dut* 78.

Ind. 1962. Unsuccessful proponent is entitled to allowance of attorney fee as "necessary expense" within statute dealing with allowance in will contest, even though proponent has contingent contract with attorney. *Burns' Ann. St.* § 7-414.—*Fickle v. Scampmorte*, 183 N.E.2d 838, 243 Ind. 165.—*Willis* 413.

Ky. 1908. The acquisition of a place or home by a building and loan association for the conduct of its business is a "necessary expense," within Ky.St. 1903, § 863, making provision for the allowance of necessary and proper expenses from moneys accumulated.—*Home Sav. Fund Co. Bldg. Ass'n v. Driver*, 112 S.W. 864, 129 Ky. 754.—*B & L Assoc* 24.

Minn.App. 1995. "Necessary expense" is essential expense as used in earnings and expense loss endorsement to manufacturer's fire insurance policy covering extra expenses defined as necessary expenses that are incurred during restoration and that insured would not have incurred if there had been no loss or damage.—*Butwin Sportswear Co. v. St.*

Paul Fire & Marine Ins. Co., 534 N.W.2d 565.—*Insurance* 2163(1).

Nev. 1973. Claim on assignment of claim secured by continuing guarantee executed by executors under order of district court to secure purchase of kitchen equipment for hotel which was asset of corporation in which decedent held stock was not a "necessary expense" of administration authorizing making of such order or under statute allowing executor or administrator to retain within his control necessary expenses of administration. N.R.S. 143.050, 150.230.—*Securities Inv. Co. of St. Louis v. Donnelley*, 513 P.2d 1238, 89 Nev. 341.—*Ex & Ad* 218.

N.Y.A.D. 3 Dept. 1938. A local alcoholic beverage control and State Liquor Authority could not refuse to approve, as a "necessary expense" of the local board, a judgment against the local board on February 10, 1937, for costs in a proceeding relating to the making of certain appointments by the local board, which the local board unsuccessfully defended, notwithstanding that the State Liquor Authority allocated no funds for payment of the judgment, since the legality and amount of judgment were not subject to approval or audit by the local board, chairman of the State Liquor Authority, or the state comptroller. Alcoholic Beverage Control Law, § 39; Tax Law, § 435.—*Olmstead v. Westchester County Alcoholic Beverage Control Bd.*, 3 N.Y.S.2d 964, 254 A.D. 63.—*Int Liq* 129.5.

N.Y.Sup. 1909. The use of automobiles by commissioners of appraisal in condemnation proceedings is not a "necessary expense" or "necessary traveling expense," which under Laws 1905, c. 725, § 5, and chapter 724, § 32, is to be allowed them, there being railroads, on which many trains run, going very near all parts of the lands, and livery teams, being accessible; the statute contemplating the ordinary method of travel.—*In re Bensel*, 124 N.Y.S. 716.—*Em Dom* 230.

N.C. 1967. Construction of public airport was not "necessary expense" within constitutional provision that no county shall contract any debt, pledge its faith, or loan its credit, nor shall tax be levied or collected by the officers except for the necessary expenses thereof, unless approved by voters, and private property adjacent to proposed airport was thus not subject to condemnation for use in connection with the airport in absence of vote on airport construction question. Const. art. 7, § 6.—*Vance County v. Royster*, 155 S.E.2d 790, 271 N.C. 53.—*Counties* 151.

N.C. 1967. The construction, maintenance and operation of a municipal airport is not a "necessary expense" within constitutional inhibition against creation of debt by city without vote of people except for necessary expenses of city. Const. art. 7, § 7.—*Harrelson v. City of Fayetteville*, 155 S.E.2d 749, 271 N.C. 87.—*Mun Corp* 867(2).

N.C. 1960. Appropriation by city of \$500 to private corporation for purpose of advertising advantages of city in effort to secure location of new industry within city was not for a "necessary expense" within meaning of provision of constitution

that no municipal corporation shall contract any debt, pledge its faith, or loan its credit, and that no tax shall be levied or collected by any officers of municipal corporation except for "necessary expenses" thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose, and hence no tax could be levied or collected by city for such purpose unless there was approval by majority of qualified voters. Const. art. 7, § 7.—*Dennis v. City of Raleigh*, 116 S.E.2d 923, 253 N.C. 400.—Mun Corp 961.

N.C. 1953. Where purpose for which a proposed expense is to be incurred by municipality is the maintenance of public peace or administration of justice, or partakes of a governmental nature, or purports to be an exercise by the municipality of a portion of the state's delegated sovereignty, the expense is a "necessary expense" within constitution and need not be authorized by the electorate. Const. art. 7, § 7.—*Wilson v. City of High Point*, 76 S.E.2d 546, 238 N.C. 14.—Mun Corp 867(2).

N.C. 1953. The issuance of bonds by a city to pay for the erection of a building for operation of its municipal court, housing of its police department and city jail and for performance of other governmental functions would be a "necessary expense" within constitutional provision that municipal corporation shall not contract any debt, pledge its faith nor loan its credit, nor shall any tax be levied or collected by any officers of municipal corporation except for the necessary expenses thereof, unless approved by majority of voters. Const. art. 7, § 7.—*Wilson v. City of High Point*, 76 S.E.2d 546, 238 N.C. 14.—Mun Corp 867(2).

N.C. 1948. Where purpose for which a proposed expense is to be incurred by municipality is the maintenance of public peace or administration of justice or partakes of a governmental nature or purports to be in exercise by the municipality of a portion of the state's delegated sovereignty the expense is a "necessary expense" within constitution and need not be authorized by the electorate. Const. art. 7, § 7.—*Green v. Kitchin*, 50 S.E.2d 545, 229 N.C. 450.—Mun Corp 867(2).

N.C. 1948. The expense of a course in police training at the National Police Academy was to enable town making such expenditure to exercise that portion of the sovereignty of the state which had been delegated to it by the state for the maintenance of law and order and was a "necessary expense" within constitutional provision dispensing with vote by the electorate in such cases. Const. art. 7, § 7.—*Green v. Kitchin*, 50 S.E.2d 545, 229 N.C. 450.—Mun Corp 867(2).

N.C. 1946. The establishment and maintenance of an airport is not a "necessary expense" within the objects of municipal expenditure, and debt may not be incurred or taxes levied for that purpose without a vote of the people.—*Greensboro-High Point Airport Authority v. Johnson*, 36 S.E.2d 803, 226 N.C. 1.—Mun Corp 867(2), 956(4).

N.C. 1943. Where county recorder's court was abolished by statute, county was under no obligation to pay salary of judge after court ceased to

exist, and any attempt to pay such salary would constitute a prohibited "gift" or "gratuity", and would not be a "necessary expense" within constitutional provision that no county shall contract any debt nor levy or collect any tax except for necessary expenses thereof unless by vote of majority of qualified voters. Priv.Laws 1941, c. 11; Const. art. 1, § 7; art. 7, § 7.—*Brown v. Board of Com'rs of Richmond County*, 28 S.E.2d 104, 223 N.C. 744.—Counties 151, 153.5.

N.C. 1943. Where broker was employed under order of court by receiver with definite compensation fixed for specified service, broker's compensation would be regarded as a "necessary expense" of receivership.—*Harrison v. Brown*, 24 S.E.2d 470, 222 N.C. 610.—Receivers 154(1).

N.C. 1939. Issuance of Columbus county bonds to build county hospital with consent of majority of voters voting, but not with consent of majority of qualified voters in county, was enjoined in taxpayer's suit under Constitution on ground that building of county hospital was not a "necessary expense" within meaning of the Constitution. Const. art. 7, § 7.—*Sessions v. Columbus County*, 200 S.E. 418, 214 N.C. 634.—Counties 196(3).

N.C. 1938. A county tax levy for county farm agent's salary was for a "necessary expense" within Constitution authorizing county to levy taxes for necessary expenses of county without vote of people. Code 1935, § 1297, subd. 40; §§ 4666, 4689(a); Pub.Loc.Laws 1935, c. 41; Const. art. 3, § 17; art. 7, § 7; art. 9, § 14.—*Nantahala Power & Light Co. v. Clay County*, 197 S.E. 603, 213 N.C. 698.—Counties 190.1.

N.C. 1938. The courts determine whether a given project of a municipality is a "necessary expense" within the Constitution so that a vote of the people on such project is unnecessary, but the governing authorities of the municipality determine in their discretion whether such project is necessary or needed in the designated locality. Const. art. 7, § 7.—*Sing v. City of Charlotte*, 195 S.E. 271, 213 N.C. 60.—Mun Corp 867(1).

N.C. 1938. Where the purpose for which a proposed expense is to be incurred by a municipality is the maintenance of public peace or administration of justice or partakes of a governmental nature or purports to be an exercise by the city of a portion of the state's delegated sovereignty, the expense is a "necessary expense" within the Constitution, and may be incurred without a vote of the people. Const. art. 7, § 7.—*Sing v. City of Charlotte*, 195 S.E. 271, 213 N.C. 60.—Mun Corp 867(2).

N.C. 1938. The expenditure of funds for the operation maintenance, and improvement of a municipal airport, was not a "necessary expense" of the city of Charlotte within constitutional provision permitting creation of debt by city without vote of the people in cases of "necessary expense" of the city. Priv.Laws 1937, c. 559; Const. art. 7, § 7.—*Sing v. City of Charlotte*, 195 S.E. 271, 213 N.C. 60.—Mun Corp 867(2).

N.C. 1938. Money which was collected pursuant to a tax levy for an undesignated purpose under the name of "contingent fund" which was in fact derived from ad valorem tax could not be used for purpose of operation, maintenance, and improvement of a municipal airport of city of Charlotte without a vote of the majority of the qualified voters, since such use would not be for "necessary expense" within the Constitution which would authorize a direct tax for such purpose, and municipal authorities, although acting in good faith, could not do indirectly what the Constitution forbade them to do directly. Priv.Laws 1937, c. 559; Const. art. 7, § 7.—Sing v. City of Charlotte, 195 S.E. 271, 213 N.C. 60.—Mun Corp 867(2).

N.C. 1937. An expense is "necessary expense," within constitutional provision against contracting debt without approval of voters except for "necessary expenses" of county, where purpose for which expense is to be incurred is maintenance of public peace or administration of justice, or purpose partakes of governmental nature or purports to be exercise by county of portion of state's delegated sovereignty, that is, where it involves necessary governmental expense. Const. art. 7, § 7.—Palmer v. Haywood County, 193 S.E. 668, 212 N.C. 284, 113 A.L.R. 1195.—Counties 151.

N.C. 1937. The building, maintenance, and operation of public hospitals is not a "necessary expense" of county, within constitutional provision against contracting debt without approval of voters, except for "necessary expenses" of county. Const. art. 7, § 7.—Palmer v. Haywood County, 193 S.E. 668, 212 N.C. 284, 113 A.L.R. 1195.—Counties 151.

N.C. 1937. Issuance of Haywood county bonds to build annex to county hospital without vote of people was enjoined under Constitution on ground that building of annex was not a "necessary expense" of county, in view of facts that resolution authorizing bonds stated that annex would be used "principally" for care of indigent sick, and that only about 70 per cent. of use of hospital in preceding year was classified as for indigent patients. Const. art. 5, § 3, as amended, see Pub.Laws 1935, c. 248; art. 7, § 7.—Palmer v. Haywood County, 193 S.E. 668, 212 N.C. 284, 113 A.L.R. 1195.—Counties 196(3).

N.C. 1936. Where refunding of county bonds would make possible lower interest rate, indebtedness incurred by county for expenses of submitting refunding plan to bondholders held "necessary expense" within meaning of Constitution, and hence, indebtedness and bonds to be issued to pay such indebtedness were valid, although not approved by majority of qualified voters of county. Code 1935, § 1334(8) (j); Const. art. 7, § 7.—Morrow v. Durham, 187 S.E. 752, 210 N.C. 564.—Counties 178.

N.C. 1935. Under statute giving approval of General Assembly to issuance of bonds and levy of property tax for payment thereof, for erection and purchase of jails, issuance of bond by county of Stanly to erect jail which was admittedly needed held authorized as a "necessary expense" for "special purpose" having "special approval" of General

Assembly (Code 1935, §§ 1297(9), 1317, 1321(a), 1334(8)(a, d); Pub.Laws 1935, c. 427; Const. art. 5, § 6; art. 7, § 7).—Castevens v. Stanly County, 183 S.E. 3, 209 N.C. 75.—Counties 174.

N.C. 1935. Municipal waterworks and sewerage system held "necessary expense" under constitutional provision making vote of majority of qualified voters unnecessary for bond issue, where purpose of bond issue is for "necessary expense". Const. art. 7, § 7.—Burt v. Town of Biscoe, 183 S.E. 1, 209 N.C. 70.—Mun Corp 918(1).

N.C. 1935. Insurance on school building held a "necessary expense" of county board of education, within constitutional provision permitting municipal corporation to contract debts without vote of qualified voters only for necessary expenses of municipal corporation (Code 1935, § 5596(a)(5); Pub.Acts 1935, c. 455, § 9; Const. art. 7, § 7).—Fuller v. Lockhart, 182 S.E. 733, 209 N.C. 61.—Schools 90.

N.C. 1935. Declaration by General Assembly and finding by city board of commissioners that both contract between city and hospital for medical treatment and hospital care of indigent sick and afflicted poor and tax levied for such purpose are for "necessary expense," so as to be valid without voters' approval are not conclusive on courts, but they are persuasive, and where it appeared that both were made in good faith, were entitled to serious consideration by courts (Pub. Acts 1935, c. 64; Const. art. 7, § 7).—Martin v. City of Raleigh, 180 S.E. 786, 208 N.C. 369.—Paupers 10, 44.

N.C. 1935. Contract between city and hospital for medical treatment and hospital care of indigent sick and afflicted poor, and tax levied for such purpose, held valid without voters' approval as "necessary expense" of city (Pub. Acts 1935, c. 64; Const. art. 7, § 7).—Martin v. City of Raleigh, 180 S.E. 786, 208 N.C. 369.—Paupers 44.

N.C. 1935. Statute authorizing county tax to provide medical treatment and hospital care for indigent sick and afflicted poor, without approval of voters, held valid, since tax is for "necessary expense" of county (Pub. Laws 1935, c. 65; Const. art. 7, § 7).—Martin v. Board of Com'rs of Wake County, 180 S.E. 777, 208 N.C. 354.—Paupers 10.

N.C. 1933. Issuance of bonds for water and sewer and street improvement was for "necessary expense" within Constitution allowing municipality to levy taxes for necessary expenses without vote of people (Const. art. 7, § 7).—Starmount Co. v. Town of Hamilton Lakes, 171 S.E. 909, 205 N.C. 514.—Mun Corp 867(2).

N.C. 1930. Public hospital held not "necessary expense" of town, authorizing taxation without approval of majority of qualified voters, within Constitution (Const. art. 7, § 7).—Burleson v. Board of Aldermen of Town of Spruce Pines, 156 S.E. 241, 200 N.C. 30.—Mun Corp 956(4).

N.C. 1930. Public hospital held not "necessary expense" of town, authorizing bond issue without approval of majority of qualified voters, within Constitution (Const. art. 7, § 7).—Burleson v. Board of

Aldermen of Town of Spruce Pines, 156 S.E. 241, 200 N.C. 30.—Mun Corp 918(1).

N.C. 1928. County commissioners of Wake county were not, under Pub.Loc.Laws 1925, c. 509, deprived of authority to issue bonds for erecting school buildings without submission of order to electors, under County Finance Act, §§ 21, 43, since, under Pub.Loc.Laws 1927, c. 276, amending Pub.Laws Ex.Sess. 1924, c. 120, which authorized commissioners to borrow money for erecting school buildings, which was continued in force by such section 43, commissioners could without submission to electors, under Const. art. 7, § 7, issue bonds for erection and maintenance of school buildings which was a "necessary expense," within article 9, §§ 1-3.—Owens v. Wake County, 141 S.E. 546, 195 N.C. 132.

N.C. 1926. Construction of municipal abattoir held "necessary expense" for which bonds could be issued without popular vote (Municipal Finance Act [C.S. § 2918 et seq.]; Const. art. 7, § 7).—Moore v. City of Greensboro, 132 S.E. 565, 191 N.C. 592.—Mun Corp 918(1).

N.C. 1926. "Necessary expense," authorizing bond issue and tax levy without popular vote, involves matters for judicial determination (C.S. Supp. 1924, §§ 2919, 2948).—Henderson v. City of Wilmington, 132 S.E. 25, 191 N.C. 269.—Mun Corp 63.15(5).

N.C. 1925. Construction of board walks held "necessary expense," for which bonds could be issued.—Storm v. Town of Wrightsville Beach, 128 S.E. 17, 189 N.C. 679.—Mun Corp 911.

N.C. 1925. Construction of jetties held "necessary expense" for which bonds could be issued; "jetties."—Storm v. Town of Wrightsville Beach, 128 S.E. 17, 189 N.C. 679.—Mun Corp 911.

N.C. 1925. Construction of incinerator held "necessary expense" for which bonds could be issued.—Storm v. Town of Wrightsville Beach, 128 S.E. 17, 189 N.C. 679.—Mun Corp 911.

N.C. 1924. A sewer system is a "necessary expense" within Const. art. 7, § 7, so as not to require a vote of the majority of the qualified voters of a sewer district to approve issuance of negotiable bonds for its construction.—Reed v. Howerton Engineering Co., 123 S.E. 479, 188 N.C. 39.—Counties 22.

N.C. 1923. Priv.Laws 1923, c. 268, requiring the city of High Point to make a stated annual appropriation to be disbursed under the direction of the Chamber of Commerce of that city, held to violate Const. art. 7, § 7, prohibiting the collecting of a tax for a purpose other than a "necessary expense" of a municipal corporation, unless authorized by majority of the voters.—Ketchie v. Hedrick, 119 S.E. 767, 186 N.C. 392, 31 A.L.R. 491.—Mun Corp 867(2).

N.C. 1919. Pub.Loc.Laws 1919, c. 391, relating to the construction and building of public roads, is supportable as providing for a "necessary expense" within Const. art. 7, § 7, prohibiting the levy of any tax by a county except for necessary expenses unless

by authority of a majority of the voters therein.—Davis v. Lenoir County, 101 S.E. 260, 178 N.C. 668.—Counties 151.

N.C. 1919. Bonds may be issued as authorized by Pub.Loc.Laws 1919, c. 391, § 6, without the approval of the voters, where the act was approved by a majority of the votes cast as the statute requires, since the construction of public roads under such act is a "necessary expense" under Const. art. 7, § 7, prohibiting levies by a county except for necessary expenses, and the Legislature may authorize the bonds without any vote.—Davis v. Lenoir County, 101 S.E. 260, 178 N.C. 668.—Counties 178.

N.C. 1918. The construction of a school building in a new special school tax district is not a "necessary expense" within Const. art. 7, § 7, restraining counties and other municipal corporations from levying taxes except for necessary expenses unless approved by a majority of the qualified voters.—Williams v. Polk County Com'rs and Board of Educ., 97 S.E. 478, 176 N.C. 554.—Schools 103(2).

N.C. 1917. Procuring a site for building a new county home is a "necessary expense," within the meaning of Const. art. 7, § 7, providing that no county shall contract debt, or levy or collect taxes, without sanction by vote of electors, except for necessary expenses, in view of article 11, § 7, providing that beneficent provision for the poor is one of the first duties of a Christian state, and the board of county commissioners has the power to issue bonds for the construction of a county home without sanction of a taxpayer's vote, under an act of the General Assembly; the word "support," as used in Revisal 1905, § 1327, including the building of a home.—Board of Com'rs for Caldwell County v. Sidney Spitzer & Co., 91 S.E. 707, 173 N.C. 147.

N.C. 1917. Provision of Stock Law, for assessment for fences between township lines named and adjacent townships cannot be upheld as a tax, because, fence not being a "necessary expense" within Const. art. VII, § 7, it must first receive approval of a popular vote.—Archer v. Joyner, 91 S.E. 699, 173 N.C. 75.—Anim 50(1).

N.C. 1916. A county fence of the character required by the fence law is not a "necessary expense" within Const. art. 7, § 7, prohibiting counties from contracting debts or levying taxes except for "necessary expenses."—Keith v. Lockhart, 88 S.E. 640, 171 N.C. 451, Am. Ann. Cas. 1918D, 916.—Counties 149.

N.C. 1915. The validity of an election under Pub. Loc.Laws 1913, c. 479, authorizing an election on the question of the issuance of bonds for the construction of a school, and the validity of the bonds issued thereunder, do not depend on the validity of the provisions of the act for an annual county tax for the maintenance of the school attacked as in conflict with Const. art. 7, § 7, prohibiting any county to levy any tax, except for its necessary expenses, except by a vote of a majority of the qualified voters, though the maintenance of schools is not a "necessary expense" of the county.—Moran

v. Board of Com'rs of Chowan County, 84 S.E. 402, 168 N.C. 289.

N.C. 1911. Graded school districts are public quasi corporations within the term "municipal corporation," as used in Const. art. 7, § 7, prohibiting any city, town, or other municipal corporation from contracting debts except for necessary expenses, unless by vote of the qualified voters; so that a graded school district could not issue bonds to erect a school building unless their issue was approved by a majority of the qualified voters; the erection of a school building not being a "necessary expense" within section 7.—*Ellis v. Trustees of Graded School of Oxford*, 72 S.E. 2, 156 N.C. 10.—*Schools* 97(4).

N.C. 1910. The protection of a town from fire and disease by providing water and sewerage is a "necessary expense," within the meaning of Const. art. 7, § 7, and Revisal 1905, § 2974, providing that no municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein, and, therefore, a vote of the people is not required to render bonds issued to provide waterworks and a sewerage system valid, in the absence of statutory restrictions enacted under Const. art. 8, § 4, making it the duty of the Legislature to restrict the power of cities to tax, borrow money, contract debts, or loan their credit.—*Underwood v. Town of Asheboro*, 68 S.E. 147, 152 N.C. 641.—*Mun Corp* 867(2).

N.C. 1908. The expense of maintaining the streets of a town in a proper manner is a "necessary expense," within Const. art. 7, § 7, forbidding a municipality to contract a debt, etc., except for a necessary expense, without a popular vote.—*Town of Hendersonville v. Jordan*, 63 S.E. 167, 150 N.C. 35.—*Mun Corp* 867(2).

N.C. 1906. Working the roads is a "necessary expense," within Const. art. 7, § 7, forbidding the levy of any tax by municipal corporations except for the necessary expenses thereof unless by a vote of the majority of the qualified voters.—*Crocker v. Moore*, 53 S.E. 229, 140 N.C. 429.

N.C. 1903. Furnishing light and water for public purposes is a "necessary purpose," and the cost thereof is a "necessary expense" of municipalities furnishing the same.—*Wadsworth v. City of Concord*, 45 S.E. 948, 133 N.C. 587.

N.C. 1898. The erection of an electric light plant for lighting the streets of a city is not a "necessary expense," within Const. art. 7, § 7.—*Mayo v. Town of Washington*, 29 S.E. 343, 122 N.C. 5, 40 L.R.A. 163.—*Mun Corp* 867(2).

N.C.App. 1970. Capital reserve fund created by county board of commissioners for future needs for school capital outlay because many of school buildings in county were unsuited for effective secondary education of pupils was a "necessary expense" within Constitution and therefore a vote of electorate was not required for levying and collecting tax on

assessed valuation of property in county for purpose of establishing the reserve fund. G.S. §§ 115–80(a), 115–80.1; Const. art. 1, § 17; art. 7, §§ 6, 10.—*Yoder v. Board of Com'rs of Burke County*, 173 S.E.2d 529, 7 N.C.App. 712, certiorari denied.—*Schools* 103(2).

N.C.App. 1968. The expense of operating city bus system by city was not "necessary expense" within constitutional provision prohibiting municipality from contracting debt or expending tax money, except for necessary expense, without voter approval. Const. art. 7, § 6.—*Cole v. City of Asheville*, 163 S.E.2d 628, 2 N.C.App. 652.—*Mun Corp* 867(2).

Okl. 1942. Where all parties to death action by administratrix for benefit of deceased's next of kin stipulated that certain sum should be paid into court in full settlement of all damages sustained because of deceased's death, allowance of reasonable fee to administratrix' attorney whose services were beneficial to all next of kin, as a "necessary expense" incurred in the administration, was proper.—*Hurley v. Hurley*, 127 P.2d 147, 191 Okla. 194, 1942 OK 220.—*Death* 101.

Or.App. 1985. Cost of foreclosure title report in action to specifically foreclose a real estate contract is not a "necessary expense" within meaning of Rules Civ.Proc., Rules 68, 68, subd. A(2), defining allowable costs and disbursements to include necessary expenses incurred in the prosecution or defense of an action.—*Randall v. Sanford*, 705 P.2d 756, 75 Or.App. 68.—*Ven & Pur* 299(4).

Pa.Super. 1990. The purchaser of property at sheriff's tax sale could recoup monies expended during redemption period to evict nonpaying tenant from redeeming taxpayer, as a "necessary expense" when property was redeemed. 53 P.S. § 7293(a).—*City of Philadelphia to Use of Philadelphia Housing Development Corp. v. Novick*, 582 A.2d 1363, 400 Pa.Super. 101.—*Tax* 709(1).

Tex.Com.App. 1940. The district attorney of Dallas county is not a "peace officer" within statutes making it the duty of peace officers to seize gambling equipment, and the commissioners' court of Dallas county had no authority to allow as a "necessary expense" of the office of district attorney drayage charge for hauling marble boards seized by district attorney from places where they were being used in violation of law to the courthouse, and the court's action in allowing the charge was void. *Vernon's Ann.C.C.P.* art. 36; *Vernon's Ann.P.C.* arts. 632, 633, 636; *Vernon's Ann.Civ.St.* art. 3912e, § 19(g, l).—*Crothwait v. State*, 138 S.W.2d 1060, 135 Tex. 119.—*Dist & Pros Attys* 5(3).

Wash. 1940. An expenditure by county which had exceeded constitutional and statutory debt limit, for purpose of operating a ferry during a strike, could not be funded under county budget act, since operation of ferry was neither a "mandatory expense" nor "necessary expense." *Rem.Rev.Stat.* §§ 3997–1 to 3997–10, 5605; Const. art. 8, § 6.—*Raynor v. King County*, 97 P.2d 696, 2 Wash.2d 199.—*Counties* 150(2).

Wash. 1938. Where contractor under partnership agreement was entitled, as against his copartners, to payment for use of his road building equipment, but copartners, who were to finance contracts of the partnership, encountered financial difficulties and contractor agreed to a financing plan under which proceeds from contracts were to be paid into a trust account and paid therefrom for labor, material, supplies, and other "necessary expenses," rental of equipment was to be considered a "necessary expense" under the trust agreement, to be paid before division of profits between the partners.—*Coluccio v. Hansen & Rowland*, 85 P.2d 1078, 197 Wash. 417.—Partners 182.

NECESSARY EXPENSE OF GOVERNMENT

Ark. 1935. Statute passed only by majority vote of both houses of Legislature which imposed privilege tax on gross premium receipts of insurance companies and set aside one-fifth of fund realized for promotion of public health held not void as violating constitutional provision requiring statutes authorizing state tax or appropriating money to be passed by two-thirds vote of both houses of Legislature, since money raised and expended for promotion of public health was "necessary expense of government" within proviso excepting statutes providing for necessary expense of government from two-thirds vote requirement. Acts 1931, p. 721, § 1, amending Crawford & Moses' Dig. § 9968; Const. art. 5, § 31.—*Central States Life Ins. Co. v. State*, 80 S.W.2d 628, 190 Ark. 605.—Statut 21.

NECESSARY EXPENSES

C.C.A.2 1936. Where residuary devisees took hotel property charged with annuities and formed partnership which profitably operated hotel, partnership's payments to annuitants held not deductible as "ordinary expenses" of business, nor were they "necessary expenses," since such payments had no relation to operation of hotel as a business.—*Commissioner of Internal Revenue v. Smiley*, 86 F.2d 658.—Int Rev 3370.

C.C.A.4 (N.C.) 1932. Town's water and sewer and street improvement bonds held issued for category of "necessary expenses," requiring no election (Const.N.C. art. 7, § 7).—*Starmount Co. v. Ohio Sav. Bank & Trust Co.*, 55 F.2d 649.—Mun Corp 918(1).

D.Minn. 1973. Profits accruing to agent buyers, who were used by farmers' cooperative to sell supplies to producer customers because of lack of other facilities to adequately provide for supply needs of producer customers, were, for purposes of tax exempt status of cooperative, "necessary expenses" within statutory requirement that purchases made by producer customers be "at actual cost, plus necessary expenses" where cost to producer customers would be about the same whether purchases were made from agent buyer or from cooperative store. 26 U.S.C.A. (I.R.C.1954) §§ 521, 521(b)(1)(B).—*Land O'Lakes, Inc. v. U. S.*, 362 F.Supp. 1253, reversed 514 F.2d 134, certiorari denied 96 S.Ct. 271, 423 U.S. 926, 46 L.Ed.2d 253,

on remand 470 F.Supp. 238, affirmed in part, reversed in part 675 F.2d 988.—Int Rev 4059.

Bkrtcy.D.Idaho 1995. Chapter 13 debtor's 401K contributions and 401K loan repayments were not "necessary expenses," and were properly disregarded in calculating the net disposable income available for payment into debtors' plan. Bankr.Code, 11 U.S.C.A. § 1325(b)(2).—*In re Moore*, 188 B.R. 671.—Bankr 3705.

Bkrtcy.D.Puerto Rico 1995. "Necessary expenses" that may be recovered from secured claim holder are those unavoidably incurred by trustee when acting as representative and to benefit unsecured creditors; expenses are not necessary when incurred as result of trustee's failure to turn over collateral or abandon secured property when estate has no equity in the property. Bankr.Code, 11 U.S.C.A. § 506(c).—*Matter of Iberica Mfg., Inc.*, 180 B.R. 707.—Bankr 2854(1).

Bkrtcy.W.D.Wis. 1985. Expenses which are incurred during periods when collateral could have been abandoned and turned over to secured creditor are not "necessary expenses" within meaning of Bankr.Code, 11 U.S.C.A. § 506(c), which allows trustee to recover from property securing allowed secured claim, reasonable, necessary costs and expenses of preserving, or disposing of, such property to extent of any benefit to holder of claim.—*Matter of Combined Crofts Corp.*, 54 B.R. 294.—Bankr 2854(3.1).

Ariz. 1940. Under statute providing that members of Arizona state fair commission shall receive actual and "necessary expenses" incurred while traveling in interests of commission, a member of commission who had been directed to supervise work at state fair grounds at Phoenix could not recover from state, as "necessary expenses", daily mileage for travel between his home and place where duties were to be performed, either as commissioner or as employee of commission. Laws 1935, c. 73, § 3 (A.R.S. § 3-1002).—*Thompson v. Frohmler*, 107 P.2d 375, 56 Ariz. 313.—Agric 2.

Ariz.App. Div. 1 1974. Legal expenses incurred by county recorder in securing private counsel to file a lawsuit against county board of supervisors to resolve dispute over board's alleged usurpation of recorder's statutory powers in regard to voter registrations were "necessary expenses" within statute providing in part that necessary expenses incurred in conduct of office of county officials is a county charge. A.R.S. § 11-601 [2].—*Maricopa County v. Biaett*, 518 P.2d 1003, 21 Ariz.App. 286.—Counties 131.

Cal.App. 4 Dist. 1964. That discovery is proper in eminent domain proceeding does not mean that it is necessary within statute permitting recovery of "necessary expenses" by condemnee in abandoned proceeding. West's Ann.Code Civ.Proc. §§ 1255a, 2016(a).—*California Interstate Tel. Co. v. Prescott*, 39 Cal.Rptr. 472, 228 Cal.App.2d 408.—Em Dom 265(5).

Iowa 1933. Co-operative fire insurance association having statutory power to levy assessments to

pay losses and "necessary expenses" had power to levy assessment to pay tort liability based on negligence in failing to write policy (Code 1931, §§ 9029, 9037).—*Mortimer v. Farmers' Mut. Fire & Lightning Ins. Ass'n*, 249 N.W. 405, 217 Iowa 1246.—Insurance 2080.

La. 1926. Writ lies to compel police jury to pay "necessary expenses" of local board of health. LSA-R.S. 40:32 et seq.—*State ex rel. Parish Board of Health of Calcasieu Parish v. Police Jury of Calcasieu Parish*, 108 So. 104, 161 La. 1.—Mand 105.

La.App. 2 Cir. 1971. Medical services are "necessary expenses" and, when furnished to the wife, are debts of the community; it is not necessary that the wife make demand upon the husband for such services in order to render husband liable for such expenses. LSA-C.C. arts. 120, 2403.—*Credit Service Corp. v. Dickerson*, 243 So.2d 827.—Hus & W 268(4).

Mass. 1936. Licensing board's expenditures for legal services in proceedings brought for their removal and in proceedings wherein court determined that board was proper authority to issue victuallers' and alcoholic beverage licenses held not "necessary expenses" within statute requiring city to pay all expenses incurred by board for blank books, printing and other necessary expenses approved by board. St.1933, Ex.Sess., c. 376, § 2, subsec. 7.—*Peters v. City of Medford*, 4 N.E.2d 338, 295 Mass. 588.—Mun Corp 868(1).

Mass. 1885. The phrase "necessary expenses," found in Pub.St. c. 135, § 3, cl. 1, providing that if the estate of a decedent is insufficient to pay all his debts it shall, after discharging the necessary expenses of his funeral and last sickness and the charges of administration, be applied to the payment of his debts in a certain order, does not embrace the purchase of a tombstone. The necessity for a decent burial arises immediately on a decease, and the law pledges the credit of the estate for the payment of such reasonable sums of money as are expended for that purpose; but there is no similar necessity for the erection of a tombstone, and, if one is erected without the authority of the administrator, the expense thereof is not a debt of the estate within the statute. The statute merely authorizes an administrator or executor to expend a reasonable sum for a tombstone if it becomes necessary and there are sufficient assets, but the administrator was not liable for a tombstone erected by another person without any authority from him.—*Sweeney v. Muldoon*, 31 N.E. 720, 139 Mass. 304, 52 Am.Rep. 708.

Mont. 1947. Particular photographs were not "necessary expenses" within statute allowing recovery as costs and disbursements "such other reasonable and necessary expenses as are taxable according to course and practice of the court." Rev. Codes 1935, § 9802.—*Broberg v. Northern Pac. Ry. Co.*, 182 P.2d 851, 120 Mont. 280.—Costs 180.

Mont. 1943. The words "necessary expenses", in statute authorizing an allowance for necessary expenses in management and settlement of the estate,

mean actual expenses legally incurred by administrator. Rev.Codes 1935, § 10285.—*Montgomery v. First Nat. Bank of Dillon*, 136 P.2d 775, 114 Mont. 428.—Ex & Ad 109(1).

Mont. 1943. Items in account of administrator with will annexed which sought recovery for amounts paid by administrator to a third person for inventory expense and for appraisement expense, without further explanation, were insufficient to authorize allowance of claims as "necessary expenses" in management of the estate. Rev.Codes 1935, § 10285.—*Montgomery v. First Nat. Bank of Dillon*, 136 P.2d 775, 114 Mont. 428.—Ex & Ad 502.

Mont. 1939. Patronage dividends of co-operative association, organized under statute, which were distributed to patrons of the association regardless of whether they were stockholders, were "necessary expenses" of the corporation, and were deductible from its gross receipts in determining its net income upon which it was required to pay a license tax. Rev.Codes 1935, § 2297, cl. 1; § 6375 et seq.—*Gallatin Farmers Co. v. Shannon*, 93 P.2d 953, 109 Mont. 155.—Tax 382.

Mont. 1939. The assets of co-operative association used for wages and salaries of employees of the association are "necessary expenses," deductible from gross receipts in determining association's net income upon which it must pay a license tax. Rev. Codes 1935, § 2297, cls. 1-3; §§ 6375 et seq., 6387.—*Gallatin Farmers Co. v. Shannon*, 93 P.2d 953, 109 Mont. 155.—Tax 382.

N.Y.A.D. 4 Dept. 1911. County Law (Consol.Laws 1909, c. 11) § 240, subd. 1, provides that the expenses necessarily incurred by the district attorney in criminal actions or proceedings arising in his own county are a county charge. Held to invest a district attorney with much discretion in determining what expenses are necessary; the term "necessary expenses" being a flexible one, to be applied in the district attorney's discretion, depending on the circumstances of each particular case.—*People ex rel. Koetteritz v. Board of Sup'rs of Herkimer County*, 132 N.Y.S. 808, 148 A.D. 392.—Counties 139.

N.Y.Sup. 1924. Referee's fees, which wife must pay in order to take up referee's report in her favor, are not "necessary expenses," which the husband may be ordered to pay, under Civil Practice Act, § 1169, relative to matrimonial actions.—*Kaufmann v. Kaufmann*, 203 N.Y.S. 510, 122 Misc. 219.—Divorce 197.

N.Y.Sup. 1890. The term "necessary expenses," used in a bond, given by the person entitled to the personal estate of a testator to the executors on receipt of such property, conditioned for the payment of the just debts of the testator and the necessary expenses of the execution of the said will, includes all expenses the executors may be subjected to in their administration as executors or trustees, including the expenses of defending a suit to restrain them from selling testator's real estate as authorized by the will.—*Scofield v. Moore*, 33 N.Y.St.Rep. 676, 11 N.Y.S. 303, 58 Hun 601.

N.C. 1964. Expenses incurred by municipality for street improvements, traffic controls, water and sewer lines and electric distribution lines are "necessary expenses" within constitutional provision prohibiting municipality from levying or collecting taxes except for necessary expenses, and expenses necessary for construction thereof may be provided for by levying of ad valorem taxes. Const. art. 7, § 6.—*Horton v. Redevelopment Commission of High Point*, 137 S.E.2d 115, 262 N.C. 306.—*Mun Corp* 957(1), 962.

N.C. 1964. Expenses incurred by municipality for parks, playgrounds and recreation centers are not "necessary expenses" within constitutional provision prohibiting municipality from levying or collecting taxes except for necessary expenses. Const. art. 7, § 6.—*Horton v. Redevelopment Commission of High Point*, 137 S.E.2d 115, 262 N.C. 306.—*Mun Corp* 957(1).

N.C. 1963. Expenses incurred, or to be incurred, by city in putting into effect urban redevelopment plan, pursuant to statutory authority, were not "necessary expenses" and required approval by majority of voters. G.S. §§ 160-62, 160-454 et seq.; Const. art. 7, § 7.—*Horton v. Redevelopment Commission of High Point*, 131 S.E.2d 464, 259 N.C. 605.—*Mun Corp* 867(2).

N.C. 1955. The acquisition, establishment and operation of auditorium and playground and recreation centers are not "necessary expenses" within Constitution for which municipality may borrow money or levy and collect taxes without approving vote of people, but are "public purposes" for which municipal corporation may appropriate available surplus funds not derived from taxes or pledge of its credit. G.S. §§ 160-155 et seq., 160-283; Const. art. 7, § 7.—*City of Greensboro v. Smith*, 85 S.E.2d 292, 241 N.C. 363.—*Mun Corp* 861, 867(2), 957(4).

N.C. 1946. The term "necessary expenses" as used in constitutional limitation on power of municipal corporations to levy taxes without popular vote except for such expenses, though not implying expenses without which government cannot exist, implies a certain degree of exigency, the essentials of frugality and economy, and a definite quality, governmental in character, which does not yield to arguments of convenience, and which cannot be dismissed from the provision without depriving it of all significance. Const. art. 7, § 7.—*Purser v. Ledbetter*, 40 S.E.2d 702, 227 N.C. 1.—*Mun Corp* 957(4).

N.C. 1946. City expenditures for park and recreational purposes were not "necessary expenses" within constitutional provision prohibiting municipal corporations from levying and collecting taxes except for such expenses, unless approved by vote of majority of qualified voters, and levy and collection of ad valorem taxes by city for such purposes despite rejection of proposed levy by qualified voters were without warrant of law and expenditure of such taxes should be restrained at suit of property owner and taxpayer. Const. art. 7, § 7.—*Purser v. Ledbetter*, 40 S.E.2d 702, 227 N.C. 1.—*Mun Corp* 957(4), 979.

N.C. 1938. What constitutes "necessary expenses" within Constitution authorizing county to levy taxes for necessary expenses of county without vote of people or special legislative approval is a question for judicial determination, and governing authorities of county may determine when they are needed. Const. art. 7, § 7.—*Nantahala Power & Light Co. v. Clay County*, 197 S.E. 603, 213 N.C. 698.—*Const Law* 68(4).

N.C. 1937. What are "necessary expenses" within constitutional provision against contracting debt without approval of voters, except for "necessary expenses," of county is question for judicial determination. Const. art. 7, § 7.—*Palmer v. Haywood County*, 193 S.E. 668, 212 N.C. 284, 113 A.L.R. 1195.—*Counties* 151.

N.C. 1937. An expense is "necessary expense," within constitutional provision against contracting debt without approval of voters except for "necessary expenses" of county, where purpose for which expense is to be incurred is maintenance of public peace or administration of justice, or purpose partakes of governmental nature or purports to be exercise by county of portion of state's delegated sovereignty, that is, where it involves necessary governmental expense. Const. art. 7, § 7.—*Palmer v. Haywood County*, 193 S.E. 668, 212 N.C. 284, 113 A.L.R. 1195.—*Counties* 151.

N.C. 1937. The building, maintenance, and operation of public hospitals is not a "necessary expense" of county, within constitutional provision against contracting debt without approval of voters, except for "necessary expenses" of county. Const. art. 7, § 7.—*Palmer v. Haywood County*, 193 S.E. 668, 212 N.C. 284, 113 A.L.R. 1195.—*Counties* 151.

N.C. 1936. Ordinance authorizing bond issue for development and equipment of parks and acquisition of lands for parks and playgrounds held valid exercise of police power, and bonds were for "necessary expenses," within Constitution obviating necessity for voters' approval. Code 1935, §§ 2776, 2787, 2795, and § 2918 et seq.; Const. art. 7, § 7.—*Atkins v. City of Durham*, 186 S.E. 330, 210 N.C. 295.—*Mun Corp* 918(1).

N.C. 1927. Establishment or maintenance of schools is not a necessary expense of county, city, town, or other municipal corporation within meaning of Const. art. 7, § 7, requiring approval of majority of qualified voters before issuance of bond or levy of tax, for purpose other than payment of "necessary expenses."—*Frazier v. Board of Com'rs of Guilford County*, 138 S.E. 433, 194 N.C. 49.

N.C. 1925. "Necessary expenses" not confined to those absolutely necessary.—*Storm v. Town of Wrightsville Beach*, 128 S.E. 17, 189 N.C. 679.—*Mun Corp* 861.

N.C. 1925. Subsequent ratification of prior indebtedness for "necessary expenses" held to warrant issuance of bonds.—*Storm v. Town of Wrightsville Beach*, 128 S.E. 17, 189 N.C. 679.—*Mun Corp* 935.

N.C. 1918. Construction and improvement of public roads are "necessary expenses" of a county,

city, town, or highway district within Const. art. 7, § 7, and creation of debt by issuance of bonds for purpose is not required to be submitted to people under section, unless ordered by Legislature, which may authorize road bonds and tax in special highway district with or without vote of people.—*Woodall v. Western Wake Highway Commission*, 97 S.E. 226, 176 N.C. 377.—High 90.

N.C. 1917. Const. art. 7, § 7, provides that no municipal corporation shall contract any debt, except for "necessary expenses," unless by majority vote of electors. Pub.Laws 1911, c. 86, § 1, subds. "a" and "b," authorizes establishment of waterworks, etc., but provides that the debt contracted therefor shall be approved by popular vote. Pub. Laws 1915, c. 131, § 1, provides that, for the purpose of securing money for any purpose involving a necessary expense, the council or other governing body is authorized to issue bonds, etc., while section 2 provides that to secure money for any other municipal purpose bonds may be issued if approved by majority of voters. Held that, under the provisions of the Constitution and statutes, the defendant town, there being no restrictions in its charter, had power to issue bonds for the establishment of a system of electric lights, waterworks, and sewage, without submitting the matter to vote of electors; such expenditure being included within the term "necessary expenses," and the Laws of 1911 being repealed by the Laws of 1915.—*Swindell v. Town of Belhaven*, 91 S.E. 369, 173 N.C. 1.

N.C. 1916. Bonds to be issued for constructing county roads are for "necessary expenses."—*Moose v. Board of Comrs of Alexander County*, 90 S.E. 441, 172 N.C. 419, Am. Ann. Cas. 1917E, 1183.

N.C. 1916. A county fence of the character required by the fence law is not a "necessary expense" within Const. art. 7, § 7, prohibiting counties from contracting debts or levying taxes except for "necessary expenses."—*Keith v. Lockhart*, 88 S.E. 640, 171 N.C. 451, Am. Ann. Cas. 1918D, 916.—Counties 149.

N.C. 1913. Under the constitutional provisions recognizing municipal corporations and giving the Legislature power to create them, and conferring upon them the right to provide for their necessary expenses, waterworks, sewerage, and other public utilities are "necessary expenses."—*Asbury v. Town of Albemarle*, 78 S.E. 146, 162 N.C. 247, 44 L.R.A.N.S. 1189.—Mun Corp 861.

N.C. 1911. In the absence of any legislative restriction on taxation and the contracting of debts, there is no objection to the issuance of bonds for the necessary expenses of a town, without a popular vote authorizing the same; and bonds issued by a town, for the purpose of extending and enlarging its water and sewerage system and making street improvements, fall within the class of "necessary expenses."—*Town of Murphy v. C.A. Webb & Co.*, 72 S.E. 460, 156 N.C. 402.—Mun Corp 918(1).

N.C. 1903. The construction of water and electric light plants is a necessary expense within Const. art. 7, § 7, providing that no municipal corporation shall contract any debt, except for the "necessary

expenses" thereof, unless by vote of the majority of the voters therein, and the indebtedness therefor need not be approved by popular vote; but under Code, §§ 3800, 3821, authorizing municipal corporations to levy taxes, and providing that their debts shall be paid only by taxation, they have power to contract and provide for payment for such improvements, in the absence of a charter provision forbidding them to do so.—*Fawcett v. Town of Mt. Airy*, 45 S.E. 1029, 134 N.C. 125, 101 Am. St. Rep. 825, 63 L.R.A. 870.—Mun Corp 867(2).

N.C. 1898. Building and repairing public bridges and roads are "necessary expenses," and a town may incur indebtedness for the same without a vote of the people, under Const. art. 7, § 7, prohibiting any tax to be levied by municipal corporations, except "for necessary expenses," unless by a majority of the voters therein.—*Herring v. Dixon*, 29 S.E. 368, 122 N.C. 420.

N.C. 1897. "Necessary expenses," as used in Const. art. 7, § 7, prohibiting a city from levying a tax, otherwise than by a vote of majority of its qualified voters, except for necessary expenses, does not include the furnishing of a supply of water to the people of the city in the sense that the city must own and operate a system of waterworks.—*City of Charlotte v. Shepard*, 27 S.E. 109, 120 N.C. 411.

Ohio App. 8 Dist. 1992. "Personal expenses," for purposes of taxable costs, are those expenses accrued by party in preparing case for trial, whereas "necessary expenses" are those funds expended which are necessary and vital to litigation. Rules Civ. Proc., Rule 54(D).—*Vinci v. Ceraolo*, 607 N.E.2d 1079, 79 Ohio App.3d 640, jurisdictional motion allowed 600 N.E.2d 678, 65 Ohio St.3d 1434, cause dismissed 602 N.E.2d 1170, 65 Ohio St.3d 1461.—Costs 193.

Pa. 1906. The sum allowed a sheriff for "necessary expenses," under Act July 11, 1901, P.L. 663, 16 P.S. §§ 2661-2665, covers reasonable help and expenses in transporting and delivering convicts and lunatics to the penitentiary and asylum, and the question whether the charges are reasonable is for the jury, and not the court.—*Lenhart v. Cambria County*, 64 A. 876, 216 Pa. 25.—Sheriffs 40.

S.C. 1919. Civ. Code 1912, § 924 (repealed 1922), providing that members of Public Service Commissions "shall each receive the sum of ten dollars a day while actually employed and necessary expenses" to be paid by party against whom complaint is made if rates are found to be unjust or excessive, did not require gas company, whose rates were found to be excessive, to pay necessary expenses of investigation; the words "necessary expenses" referring to the personal expenses of the commissioners.—*Banks v. Columbia Ry., Gas & Elec. Co.*, 101 S.E. 285, 113 S.C. 99.—Costs 191.

S.D. 1889. Travel and living expenses of South Dakota court reporter who attended the taking of depositions in other states did not qualify as "necessary expenses" which could be taxed as costs, although use of South Dakota court reporter to take depositions in other states may have been of convenience to the individual defendants. SDCL

15-17-4.—Candee Const. Co., Inc. v. South Dakota Dept. of Transp., 447 N.W.2d 339, certiorari denied 110 S.Ct. 1785, 494 U.S. 1067, 108 L.Ed.2d 786.—Costs 189.

Tex.Civ.App.—Beaumont 1922. Expenses incurred by sheriff in hiring automobiles owned by other persons for the conveyance of prisoners, etc., held not “necessary expenses” of the office within Vernon’s Sayles’ Ann.Civ.St.1914, art. 3897, Vernon’s Ann.Civ.St. art. 3899, authorizing the sheriff to deduct “necessary expenses” of office from excess fees of office due to the county, in view of Vernon’s Ann.Code Cr.Proc.1916, art. 1122, subd. 5, Vernon’s Ann.C.C.P. 1006, 1029.—Hammond v. Harris County, 243 S.W. 1002, writ refused.—Sheriffs 71.

Va. 1943. Money expended by surviving partner over 15 years for repairs of partnership properties constituted “necessary expenses” for which surviving partner was entitled to credit on accounting to estate of deceased partner for one-third of partnership assets.—Eppes v. Eppes, 27 S.E.2d 164, 181 Va. 970.—Ex & Ad 44.

Wash. 1938. Where contractor under partnership agreement was entitled, as against his copartners, to payment for use of his road building equipment, but copartners, who were to finance contracts of the partnership, encountered financial difficulties and contractor agreed to a financing plan under which proceeds from contracts were to be paid into a trust account and paid therefrom for labor, material, supplies, and other “necessary expenses,” rental of equipment was to be considered a “necessary expense” under the trust agreement, to be paid before division of profits between the partners.—Coluccio v. Hansen & Rowland, 85 P.2d 1078, 197 Wash. 417.—Partners 182.

NECESSARY EXPENSES AND DISBURSEMENTS

Utah App. 1992. “Necessary expenses and disbursements” recoverable by personal representative as costs encompasses wider range of expenditures than may be recovered in ordinary civil actions and may extend to expenditures incurred in litigation of claims by or against estate. U.C.A.1953, 75-3-719, 75-3-805(b); Rules Civ.Proc., Rule 54(d).—Matter of Estate of Quinn, 830 P.2d 282.—Ex & Ad 111(1), 111(4).

NECESSARY EXPENSES REQUIRED FOR SELF-EMPLOYMENT OR BUSINESS OPERATIONS

Utah App. 1994. For purposes of determining former husband’s gross income, to calculate alimony and child support, payments by husband’s solely owned corporation of principal on loans were not “necessary expenses required for self-employment or business operations”; statute’s general language allowed deduction of only those expenses necessary to allow business to operate at reasonable level. U.C.A.1953, § 78-45-7.5(4)(a).—Bingham v. Bingham, 872 P.2d 1065.—Child S 91; Divorce 237.

NECESSARY EXPERT

Tenn. 1995. Vocational disability and rehabilitation expert who testified in workers’ compensation case was “necessary expert” within meaning of rule providing that costs not included in the bill of costs prepared by clerk are allowable only in court’s discretion and discretionary costs allowable include “necessary expert” witness fees for depositions or trials; vocational disability expert’s testimony was important to trial court’s assessment of extent of claimant’s vocational disability, he was the only vocational expert to testify, trial court referred to expert’s testimony in its opinion, and trial court’s finding of permanent total disability was consistent with expert’s finding. Rules Civ.Proc., Rule 54.04(2).—Miles v. Marshall C. Voss Health Care Center, 896 S.W.2d 773.—Work Comp 1987.

NECESSARY EXTERIOR REPAIRS

Mass. 1924. Improvements required by building commissioner held not “necessary exterior repairs” or “interior repairs.”—Borden v. Hirsh, 143 N.E. 912, 249 Mass. 205, 33 A.L.R. 526.—Land & Ten 152(4).

NECESSARY FACT

Ga.App. 1991. No fatal variance existed between theft indictment which alleged that defendant took a “set” of sheets and proof that showed that defendant took one sheet where set of sheets necessarily includes at least one sheet; date, place, owner, brand name, and value of property taken was same; and there was no difference between manner in which offense was alleged and proven to have been committed; thus, there was no variance in “necessary fact.”—Marshall v. State, 405 S.E.2d 893, 199 Ga.App. 678.—Larc 40(6).

NECESSARY FACTS

Wis.App. 2002. Under “necessary facts” exception to double jeopardy bar, before a prosecutor can bring a new charge following a conviction for an included crime, a new and necessary fact must intervene, one that was not in existence at the time of the first conviction. W.S.A. 939.71.—State v. McKee, 648 N.W.2d 34, 256 Wis.2d 547, 2002 WI App 148, review denied 653 N.W.2d 890, 257 Wis.2d 118, 2002 WI 121.—Double J 165.

NECESSARY FEES ALLOWED BY LAW

Wis. 1998. For purposes of statute providing that costs recoverable as taxable costs in civil proceedings include all necessary fees allowed by law, attorney fees awarded under federal Civil Rights Attorney’s Fees Awards Act are “necessary fees allowed by law.” 42 U.S.C.A. § 1988(b); W.S.A. 814.04(2).—Hartman v. Winnebago County, 574 N.W.2d 222, 216 Wis.2d 419.—Civil R 292.1.

NECESSARY FOOD

Tex.App.—Dallas 1982. Phrase “necessary food” in statute defining offense of cruelty to animals means food sufficient in both quantity and quality to sustain the animal in question. V.T.C.A., Penal

Code § 42.11(a)(2).—*Cross v. State*, 646 S.W.2d 514, petition for discretionary review refused.—*Anim* 40.

NECESSARY FOOD, CLOTHING, OR LODGING

Mo. 1916. Under Mo.R.S.A. § 4419, the words “necessary food, clothing, or lodging” mean such as is requisite to sustain life and health, and lacking which life of child will be endangered, or its health permanently injured.—*State v. Shouse*, 186 S.W. 1064, 268 Mo. 199.—Child S 653.

NECESSARY FOR AN EFFECTIVE REORGANIZATION

C.A.8 (Minn.) 1986. Phrase “necessary for an effective reorganization,” in statute governing relief from automatic stay requires a debtor to show not only that the property in question is essential to the reorganization plan but also that an effective reorganization is realistically possible. Bankr.Code, 11 U.S.C.A. § 362(d), (d)(2)(B).—In re Ahlers, 794 F.2d 388, certiorari granted in part *Norwest Bank Worthington v. Ahlers*, 107 S.Ct. 3227, 483 U.S. 1004, 97 L.Ed.2d 733, reversed 108 S.Ct. 963, 485 U.S. 197, 99 L.Ed.2d 169, on remand 844 F.2d 587.—Bankr 2429(1).

D.N.J. 1996. Property is “necessary for an effective reorganization,” such that debtor’s lack of equity in property will not provide basis for lifting automatic stay, only if there is reasonable possibility of successful reorganization within reasonable time. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Sea Garden Motel and Apartments, 195 B.R. 294.—Bankr 2429(1).

D.Utah 1985. Test of whether a property is “necessary for an effective reorganization,” under code provision authorizing relief from the automatic stay, is a test of necessity alone and does not include a determination of the feasibility of a successful reorganization; disagreeing with *In re Greiman*, 45 B.R. 574. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Sunstone Ridge Associates, 51 B.R. 560.—Bankr 2429(1).

8th Cir.BAP (Neb.) 2000. To show that property is “necessary for an effective reorganization,” so as to preclude relief from stay based on debtor’s lack of equity therein, debtor must demonstrate there is reasonable possibility of successful reorganization within reasonable time. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Bowman, 253 B.R. 233.—Bankr 2427, 2429(1), 2439(7).

8th Cir.BAP (Neb.) 2000. To show that property is “necessary for an effective reorganization,” so as to preclude relief from stay based on debtor’s lack of equity therein, debtor must demonstrate that its proposed plan of reorganization is feasible and, therefore, likely confirmable. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Bowman, 253 B.R. 233.—Bankr 2427, 2429(1), 2439(7).

Bkrtcy.D.Me. 1995. To demonstrate that property is “necessary for an effective reorganization,” so as to preclude lifting of stay based on debtor’s lack of equity therein, debtor must establish that

property is essential for effective reorganization that is in prospect. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Petit, 176 B.R. 296.—Bankr 2429(1).

NECESSARY FOR A SUCCESSFUL REORGANIZATION

Bkrtcy.S.D.Miss. 1997. New value that Chapter 11 debtors’ equity holders proposed to contribute to debtor’s reorganization, in return for interest in reorganized entity, was “necessary for a successful reorganization,” within meaning of new value exception to absolute priority rule, where it provided needed capital to pay operating costs and debt service under plan. Bankr.Code, 11 U.S.C.A. § 1129(b)(2)(B)(ii).—*Matters of Treasure Bay Corp.*, 212 B.R. 520.—Bankr 3561.

NECESSARY FORCE

Fla. 1931. “Necessary force” in making arrest is force which ordinary, prudent, and intelligent person with knowledge and in same situation would deem necessary (Comp.Gen.Laws 1927, § 8323).—*Dixon v. State*, 132 So. 684, 101 Fla. 840.—Assault 64.

NECESSARY FOR DEBTOR’S EFFECTIVE REORGANIZATION

D.N.J. 1993. To prevent lifting of stay to allow creditor to exercise its rights in property, on ground that property is “necessary for debtor’s effective reorganization,” debtor must show that there is reasonable possibility of successful reorganization within a reasonable time; while the hearing on creditor’s motion to lift stay should not be transformed into confirmation hearing, debtor must demonstrate that its proposed or contemplated plan is not patently unconfirmable and has a realistic chance of being confirmed. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Fairfield Executive Associates, 161 B.R. 595.—Bankr 2429(1).

NECESSARY FOR DEBTOR’S PERFORMANCE UNDER PLAN

Bkrtcy.W.D.N.C. 1987. Telephone, fan, iron, color television, watch, picture, and bedroom suite purchased by debtor postpetition were not “necessary for debtor’s performance under plan” within meaning of section of Bankruptcy Code dealing with postpetition claims. Bankr.Code, 11 U.S.C.A. § 1305.—In re Roseboro, 77 B.R. 38.—Bankr 2832.1.

NECESSARY FOR EFFECTIVE REORGANIZATION

S.D.Ind. 1990. To determine whether property is “necessary for effective reorganization,” within meaning of stay provision, bankruptcy court must determine whether property is necessary to effect reorganization and whether there is reasonable possibility of successful reorganization within reasonable time. Bankr.Code, 11 U.S.C.A. § 362(d)(2)(B).—In re Kerns, 111 B.R. 777.—Bankr 2429(1).

Bkrtcy.D.Md. 1991. To demonstrate that property is "necessary for effective reorganization," so as to warrant denial of creditor's motion for relief from stay in order to foreclose thereon, debtor must do more than show that there can be no conceivable reorganization without property; rather, property must be essential for effective reorganization that is in prospect. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Woodscape Ltd. Partnership, 134 B.R. 165.—Bankr 2429(1).

Bkrtcy.S.D.Ohio 1991. To show that property is "necessary for effective reorganization," within meaning of statute precluding relief from stay, debtor must show that there is some reasonable possibility of successful reorganization, and this showing must be made within reasonable time. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Rollingwood Apartments, Ltd., 133 B.R. 906.—Bankr 2429(1).

Bkrtcy.E.D.Va. 1994. In deciding whether property is "necessary for effective reorganization," so as to preclude lifting of stay based on debtor's lack of equity therein, court must preliminarily find that reorganization is in prospect, i.e., that there is reasonable possibility of successful reorganization within reasonable time. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Cho, 164 B.R. 730.—Bankr 2429(1).

NECESSARY FOR ENFORCEMENT

C.A.7 (Ill.) 1970. As Referee in Bankruptcy could have entered order requiring debtor to endorse paychecks and turn them over to trustee, preserving to debtor the benefits of Chapter XIII, entry of order enjoining employer from terminating debtor's employment because of wage deduction order was not "necessary for enforcement" of Bankruptcy Act, as required by section thereof defining jurisdiction of courts of bankruptcy. Bankr.Act, § 2, sub. a(15), 11 U.S.C.A. § 11(a) (15).—In re Jackson, 424 F.2d 1220, certiorari denied Jackson v. International Harvester Co., 91 S.Ct. 145, 400 U.S. 911, 27 L.Ed.2d 150.—Bankr 2233(1).

C.A.7 (Wis.) 1966. Referee's order nullifying and holding void a state court cognovit judgment taken by creditor on unsecured note some ten days after debtor had filed petition for arrangement was "necessary for enforcement" of exclusive jurisdiction provision of Bankruptcy Act, within provision authorizing referee to make orders necessary for enforcement of provisions of the Act. Bankr.Act, §§ 2, sub. a(15), 311, 11 U.S.C.A. §§ 11(a) (15), 711.—Allied Development Corp. v. Stephan & Brady, Inc., 371 F.2d 325.—Bankr 2462.

NECESSARY FOR HIS COMFORTABLE SUPPORT

Conn. 1934. Under will creating spendthrift trust and providing that trustee should pay to beneficiary amount "necessary for his comfortable support," such words imported an actual need or a situation in which contribution prescribed was required in order that such support might be obtained.—Bridgeport-City Trust Co. v. Beach, 174 A. 308, 119 Conn. 131.—Wills 684.10(4).

NECESSARY FOR ITS EFFECTIVE REORGANIZATION

Bkrtcy.D.Me. 1993. Debtor does not satisfy its burden of showing that property is "necessary for its effective reorganization," so as to preclude lifting of stay based on debtor's lack of equity in property, simply by showing that property is essential or indispensable to its reorganization; debtor must also show that its planned reorganization is feasible. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Turner, 161 B.R. 1.—Bankr 2427.

NECESSARY FOR MAINTENANCE OR SUPPORT OF DEBTOR

Bkrtcy.E.D.Va. 1995. Payment for luxury property is not "necessary for maintenance or support of debtor," within meaning of disposable income requirement for Chapter 13. Bankr.Code, 11 U.S.C.A. § 1325(b)(2).—In re Kasun, 186 B.R. 62.—Bankr 3705.

NECESSARY FOR OCCUPANCY AND ENJOYMENT

Pa.Super. 1959. Where church owned lot, adjacent to church edifice, used as a parking lot exclusively for people attending religious services, and no income was realized from lot and there were insufficient parking places on streets in church area and many of church members lived more than two miles from church and were forced to park as far as five or six blocks from church, parking lot was "necessary for occupancy and enjoyment" of places of worship within contemplation of statute exempting from taxation all churches with ground thereto annexed necessary for occupancy and enjoyment of the same, and such lots were exempt from taxation. P.S.Const. art. 9, § 1; 72 P.S. § 5020–204.—Second Church of Christ Scientist of Philadelphia v. City of Philadelphia, 151 A.2d 860, 189 Pa.Super. 579, reversed 157 A.2d 54, 398 Pa. 65, 75 A.L.R.2d 1103.—Tax 244.

NECESSARY FOR PROPER OCCUPANCY, USE AND ENJOYMENT OF A HOUSE OF PUBLIC WORSHIP

Ohio 1941. A vacant lot adjacent to lot on which church was located was not exempt from taxation as "necessary for proper occupancy, use and enjoyment of a house of public worship", where church members parked automobiles and placed bulletin board on vacant lot, owners of two lots acquired them from common grantor, and deed of church lot gave church option to purchase, and right to use, vacant lot. Gen.Code, § 5349.—Congregational Union of Cleveland v. Zangerle, 34 N.E.2d 201, 138 Ohio St. 246, 20 O.O. 284.—Tax 244.

NECESSARY FOR PROPER USE OF LAND

Ala. 1931. Words "necessary for proper use of land" in statute penalizing railroad for failure to provide necessary crossings means way of necessity, not mere way of convenience (Code 1923, § 10009).—McBurney v. Central of Georgia Ry. Co., 136 So. 796, 223 Ala. 390.—R R 102(2).

NECESSARY FOR PUBLIC CONVENIENCE

Ill.App.1 Dist. 1994. Requirement that proposed special use be “necessary for public convenience” at proposed location, which has been construed to mean expedient or reasonably convenient to public welfare, is not necessarily satisfied merely because proposed use is legitimate use or one which is commercially expedient to applicant; instead, applicant must demonstrate that community will derive at least some benefit from proposed use. Chicago, Ill. Ordinance 11.10-4.—Scadron v. Zoning Bd. of Appeals of City of Chicago, 202 Ill.Dec. 171, 637 N.E.2d 710, 264 Ill.App.3d 946.—Zoning 378.1.

NECESSARY FOR PUBLIC USE

E.D.Ark. 1996. In determining whether taking of property is “necessary for public use” court may consider not only present demands of public, but those which may be fairly anticipated in future.—Missouri Pacific R. Co. v. 55 Acres of Land Located in Crittenden County, Ark., 947 F.Supp. 1301.—Em Dom 56.

La.App.Orleans 1942. Where a municipality can better, more conveniently and more beneficially give service to and advance the welfare of the community through the taking and owning of property than it could without possession, the property becomes “necessary for public use” so as to authorize expropriation.—City of New Orleans v. Crawford, 9 So.2d 82.—Em Dom 13.

NECESSARY FOR SUPPORT

N.Y.Sur. 1945. Where testator directed that wife should have for life income of testamentary trust and should she at any time in her sole and absolute discretion deem any advancement of principal of such trust necessary for her support, such advancement should be made upon her request without any question, words “necessary for support” were words of limitation and were to be read in the light of testator’s expectation that trust fund would in some degree pass to remaindermen, and wife would not be entitled to take money from trust without reasonable need therefor.—In re Bullock’s Estate, 54 N.Y.S.2d 33.—Wills 684.2(4).

NECESSARY FOR SUPPORT OF DEBTOR AND ANY DEPENDENT

Bkrtcy.S.D.Fla. 1988. Pension payments which Chapter 7 debtor was entitled to receive from closely held corporate employer were not “necessary for support of debtor and any dependent” within meaning of Illinois exemption statute; debtor and wife owned marital residence free and clear of any encumbrances, and debtor’s annual income of \$60,000 provided him with sufficient opportunity to plan and save for retirement. Ill.S.H.A. ch. 110, ¶ 12-1001(g)(5).—In re Strehlow, 84 B.R. 241.—Exemp 49.

NECESSARY FOR THE EXERCISE OF THEIR RESPECTIVE JURISDICTIONS

C.C.A.9 (Cal.) 1947. An order equivalent to habeas corpus, directing warden to produce prisoner to orally argue his appeal in habeas corpus case, is not within statute giving federal courts power to issue writs “necessary for the exercise of their respective jurisdictions”. U.S.C.A.Const. art. 1, § 9; 28 U.S.C.A. § 1651.—Price v. Johnston, 159 F.2d 234, certiorari granted 67 S.Ct. 1757, 331 U.S. 804, 91 L.Ed. 1826, reversed 68 S.Ct. 1049, 334 U.S. 266, 92 L.Ed. 1356.—Hab Corp 812.

NECESSARY FOR THE FAIR ENJOYMENT

N.J. 1977. For purpose of statute providing property tax exemption for land owned by nonprofit organization which is “necessary for the fair enjoyment” of organization’s buildings, the phrase “necessary for the fair enjoyment” refers to the use of the buildings, and the term “necessary” does not mean absolutely indispensable but refers to what is reasonably necessary to accomplish organization’s purposes. N.J.S.A. 54:4-3.6.—Boys’ Club of Clifton, Inc. v. Jefferson Township, 371 A.2d 22, 72 N.J. 389.—Tax 241.1(4).

NECESSARY FOR THEIR MAINTENANCE

N.J.Super.A.D. 1987. Pension statute requiring that benefits for pensioner’s family be “necessary for their maintenance” does not mean that benefits will only be paid if pensioner’s family would be destitute without such payments. N.J.S.A. 43:1-2.—T.J.M. v. Board of Trustees of Police and Firemen’s Retirement System, 527 A.2d 883, 218 N.J.Super. 274.—Mun Corp 220(9).

NECESSARY FOR THE REASONABLE SECURITY OF THE INSTITUTION

Cal.App.1 Dist. 1980. Term “necessary” as used in statute which provides that civil rights of state prisoners include the right to have personal visits subject to the power of the Department of Corrections to provide such restrictions as are “necessary for the reasonable security of the institution” is to be construed according to its ordinary meaning; therefore, a restriction on the right of personal visits is not “necessary” if the goal which it is intended to promote can effectively be promoted by less restrictive means. West’s Ann.Pen.Code, §§ 2601, 2601(d).—In re Bell, 168 Cal.Rptr. 100, 110 Cal.App.3d 818.—Prisons 4(6).

NECESSARY FOR THE TREATMENT

N.D.Ga. 1983. Group health insurance policy provision excluding coverage as to charges for care, treatment, services or supplies which were not “necessary for the treatment” of the injury or disease concerned was ambiguous as to meaning of quoted phrase, and meaning of quoted phrase was question for jury. O.C.G.A. § 13-2-1.—Dallis v. Aetna Life Ins. Co., 574 F.Supp. 547, affirmed 768 F.2d 1303.—Insurance 2533.

NECESSARY FUNERAL EXPENSE

D.C. 1973. Tombstone purchased by executor, because of personal choice, was not a "necessary funeral expense" within meaning of medical payments provision of insurance policy issued by defendant to the decedent.—*Sutton v. United Services Auto. Ass'n*, 302 A.2d 58, 87 A.L.R.3d 494.—Insurance 2832.

NECESSARY FUNERAL EXPENSES

Ohio Com.Pl. 1969. While furnishing flowers for funeral and purchase of tombstone or marker are not absolute necessities, reasonable expenditures for such items for respectable teen-aged son are "necessary funeral expenses".—*Caswell v. Harry Miller Excavating Co.*, 246 N.E.2d 921, 20 Ohio Misc. 46, 47 O.O.2d 307, 49 O.O.2d 75.—Death 84.

NECESSARY FUNERAL SERVICE

Tex.Civ.App.—Beaumont 1953. Where testimony indicated that use of burial vaults was not the usual practice in funerals, vault was not a "necessary funeral service" within policy providing for payment of all reasonable expenses for necessary funeral services arising out of automobile accident.—*Alamo Cas. Co. v. Smith*, 266 S.W.2d 416.—Insurance 2832.

NECESSARY FUNERAL SERVICES

Tex.Civ.App.—Beaumont 1953. Where insurer agreed to pay all reasonable expenses for "necessary funeral services" resulting from automobile accident, "necessary" was used to exclude an item which might be appropriate to a funeral and within capacity of insured to pay, but which was only a matter of personal choice by insured and was not generally and by common usage done or furnished or provided as part of funeral.—*Alamo Cas. Co. v. Smith*, 266 S.W.2d 416.

NECESSARY FURNITURE

Ill. 1904. The words "necessary furniture," as used in Illinois Administration Act, § 74, R.S.1874, p. 117, allowing the widow certain articles of property, such as bedsteads, bedding, and household and kitchen furniture, necessary for herself and family, must be construed with reference to the circumstances and mode of life of the parties, and mean the ordinary and appropriate furniture for such homesteads.—*Gillett v. Gillett*, 69 N.E. 942, 207 Ill. 136.

NECESSARY IMPLEMENT

Kan. 1936. Mortgage on automobile executed by hotel clerk living several blocks from hotel, which was not joined in by clerk's wife, held invalid, since automobile was exempt as a "necessary implement" in clerk's business. Rev.St.1923, 60-3504, subds. 6, 8.—*Foster v. Foster*, 61 P.2d 1350, 144 Kan. 528.—Exempt 45.

NECESSARY IMPLICATION

C.A.7 (Ill.) 1953. "Necessary implication" refers to a logical necessity, and means that no other

statutory interpretation is permitted by words of statute construed, and is an implication which results from so strong a probability of intention that intention contrary to that imputed cannot be supported.—*U.S. v. Jones*, 204 F.2d 745, certiorari denied 74 S.Ct. 67, 346 U.S. 854, 98 L.Ed. 368, rehearing denied 74 S.Ct. 216, 346 U.S. 905, 98 L.Ed. 404.—Statut 185.

C.A.7 (Ill.) 1953. The term "necessary implication" is used with respect to statute where intention with regard to subject matter may not be manifested by explicit and direct words, but is gathered by implication or necessary deduction from circumstances and general language.—*U.S. v. Jones*, 204 F.2d 745, certiorari denied 74 S.Ct. 67, 346 U.S. 854, 98 L.Ed. 368, rehearing denied 74 S.Ct. 216, 346 U.S. 905, 98 L.Ed. 404.—Statut 185.

C.A.1 (Puerto Rico) 2000. Advertisement conveys a claim by "necessary implication" under Lanham Act when, considering advertisement in its entirety, audience would recognize the claim as readily as if it had been explicitly stated. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).—*Clorox Co. Puerto Rico v. Proctor & Gamble Commercial Co.*, 228 F.3d 24.—Trade Reg 870(1).

Ariz. 1937. "Necessary implication" means not natural necessity, but so strong a probability of an intention that one contrary to that which is imputed to the party using the language cannot be supposed.—*Mahoney v. Maricopa County*, 68 P.2d 694, 49 Ariz. 479.

Cal.App.2 Dist. 1996. For consequence to be implied from statute there must be greater justification for its inclusion than consistency or compatibility with act from which it is implied; "necessary implication" is one that is so strong in its probability that contrary thereof cannot reasonably be supposed.—*Lubner v. City of Los Angeles*, 53 Cal. Rptr.2d 24, 45 Cal.App.4th 525, review denied.—Statut 185.

Conn. 1901. "Necessary implication" in determining the intention of a testator was defined by Lord Hardwicke not as being the only possible conclusion, but because the court finds it so to answer the intention of the deviser, *Coryton v. Helyar*, 2 Cox, 340, 348. Lord Mansfield in 1773 defined it in the same way. The term "necessary implication," he said, was used simply in opposition to "conjecture." The rule, as stated by Jarman, took its final form from a remark of Lord Eldon, in 1813, that "necessary implication" means not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed to the testator cannot be supposed.—*Weed v. Scofield*, 49 A. 22, 73 Conn. 670.

Ill.App.1 Dist. 1990. "Necessary implication" method of rebutting presumption of statute's prospective operation refers to logical necessity, meaning that no interpretation other than retrospective applicability is permitted by words of statute construed.—*Young v. Chicago Transit Authority*, 154 Ill.Dec. 18, 568 N.E.2d 18, 209 Ill.App.3d 84, appeal

denied 159 Ill.Dec. 118, 575 N.E.2d 925, 139 Ill.2d 606.—Statut 263.

Ill.App.1 Dist. 1990. "Necessary implication" for disinheritance in testamentary trust is implication which is so strong a probability as to settlor's meaning that intent contrary to that imputed cannot be supposed.—Harris Trust and Sav. Bank v. Donovan, 148 Ill.Dec. 578, 560 N.E.2d 1175, 203 Ill.App.3d 259, appeal allowed 153 Ill.Dec. 374, 567 N.E.2d 332, 136 Ill.2d 544, reversed 163 Ill.Dec. 854, 582 N.E.2d 120, 145 Ill.2d 166.—Wills 682(1).

Iowa 1928. A "necessary implication" is one which results from so strong a probability of intention that an intention contrary to that imputed to the testator cannot be supposed.—Harvey v. Clayton, 220 N.W. 25, 206 Iowa 187.

Kan. 1903. "Necessary implication" does not mean to shut out every other possible or imaginary conclusion, and from which there is no possible escape, but means one leading to such a conclusion as, under the circumstances, a reasonable view impels us to take, the contrary of which would be improbable and absurd. Speaking on the matter of implication in the consideration of the statutes, Black, Interp.Laws, § 33, says: "This doctrine does not empower the courts to go to the length of supplying things that were intentionally omitted from the act, but it authorizes them to draw inferences from the general meaning and purpose of the Legislature, and from the necessity of making the act operative and effectual as to those minor or more specific things which are included in the more broad or general terms of the law, or as to those consequences of the enactment which the Legislature must be understood to have foreseen and intended."—Gilbert v. Craddock, 72 P. 869, 67 Kan. 346.

Ky. 1918. Will giving estate to testatrix's husband to have and enjoy during his life, and at his death, should there be anything left, to a church, by "necessary implication" (that is, so strong a probability of intention that an intention contrary cannot be supposed) gives him a power of disposition, limited, however, to encroachment on principal necessary to his reasonable and comfortable support.—Trustees Presbyterian Church, Somerset, v. Mize, 205 S.W. 674, 181 Ky. 567, 2 A.L.R. 1237.—Wills 689.

Ky. 1916. "Necessary implication" as applied to construction of a will means not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed to testator cannot be supposed.—Calloway v. Calloway, 188 S.W. 410, 171 Ky. 366, L.R.A. 1917A,1210.

Ky. 1904. "Necessary implication" means, not natural necessity, but so strong a probability of an intention that an intention contrary to that which is imputed to the testator cannot be imposed.—Galloway v. Durham, 81 S.W. 659, 118 Ky. 544, 26 Ky.L.Rptr. 445, 111 Am.St.Rep. 300.

Md. 1935. Term "necessary implication," as used in connection with rule that separation agreement will not be construed to bar surviving spouse's

right in other's estate unless it is clearly expressed therein, or necessarily implied therefrom, implies so strong a probability of intention that an intent to the contrary than that imputed to one of the parties to such an instrument cannot be reasonably supposed.—Hewitt v. Shipley, 181 A. 345, 169 Md. 221.—Hus & W 279(4).

N.H. 1894. The phrase "necessary implication," as applied in the law of statutory construction, means an implication that is absolutely necessary and unavoidable.—Attorney General v. Sands, 44 A. 83, 68 N.H. 54.

N.J.Super.A.D. 1951. In construing a will, the expression "necessary implication" excludes conjecture and means, not natural necessity, but so strong a probability of intention that an intention contrary to that, which is imputed to testator, cannot be supposed.—Russell v. Russell, 85 A.2d 296, 16 N.J.Super. 589.—Wills 478.

N.J.Ch. 1908. "Necessary implication," in cases on the construction of instruments, means, not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed cannot be supposed.—Tuttle v. Woolworth, 77 A. 684, 74 N.J.Eq. 310.—Contracts 168.

N.Y. 1958. Under statute providing that personal property embraced in a power to bequeath passes by will purporting to pass all personal property unless the intent that will shall not operate as an execution of power appears therein either expressly or by necessary implication, a will which bequeaths all testator's personal property constitutes an exercise of power of appointment unless a contrary intent appears either expressly or by necessary implication, and a "necessary implication" results only when instrument will permit of no other interpretation. Personal Property Law, § 18; Personal Property Law § 176.—In re Deane's Will, 175 N.Y.S.2d 21, 4 N.Y.2d 326, 151 N.E.2d 184.—Wills 589(1).

N.Y.A.D. 1 Dept. 1943. In statute providing that personalty embraced in power to bequeath passes by will purporting to pass all personalty of testator, unless contrary intent appears expressly or by necessary implication, "necessary implication" results only where the will permits of no other interpretation, and "necessary" means such as must be; impossible to be otherwise; not to be avoided; inevitable. Personal Property Law, § 18.—Chase Nat. Bank of City of New York v. Central Hanover Bank & Trust Co., 39 N.Y.S.2d 541, 265 A.D. 434.—Wills 589(4).

N.Y.A.D. 2 Dept. 1963. "Necessary implication" as used in statute providing that will bequeathing all personal property constitutes exercise of power of appointment unless contrary appears therein expressly or by necessary implication results only where will permits of no other interpretation. Personal Property Law, § 18.—In re Latimer's Estate, 242 N.Y.S.2d 233, 19 A.D.2d 270, 16 A.L.R.3d 903.—Wills 589(4).

N.Y.Sur. 1950. In construing wills "necessary implication" results only where will permits of no

other interpretation.—*In re Eppig's Will*, 101 N.Y.S.2d 706.—Wills 435.

N.Y.Sur. 1924. The "necessary implication" of testator's intent not to exercise a power of appointment by his will, within Real Property Law, § 176, results only where the will permits no other interpretation; "necessary implication" meaning "such as must be," "impossible to be otherwise," "not to be avoided," and "inevitable," and the use of the words "of which I may die seized" did not provide the necessary implication.—*In re Flewellin's Will*, 202 N.Y.S. 496, 122 Misc. 256.—Wills 692(5).

N.C. 1903. "Necessary implication" is that which leaves no room to doubt. It is not an implication upon conjecture.—*Whitfield v. Garriss*, 45 S.E. 904, 134 N.C. 24.

R.I. 1941. Devises and bequests by implication are not favored, but are allowed in rare cases because the intention of the testator as ascertained by examination of whole will requires creation of such estate for the purpose of effectuating the manifest intention of testator, and the term "necessary implication" in such instances means a compelling if not irresistible inference arising from testator's intention as expressed by him in his will, and such an inference cannot be based on mere speculation or conjecture.—*Willoughby v. Willoughby*, 19 A.2d 857, 66 R.I. 430.—Wills 478.

R.I. 1941. Where testator bequeathed to wife for life or during widowhood all of the revenues from his entire estate to sell or let the whole or any part of the estate and to give good and sufficient deed to purchasers in fee simple and to invest the proceeds of any sale in legal securities, and after death or widowhood of wife, son was to have all property found in the state of Rhode Island, and codicil provided that all personalty in estate known as "The Chalet", subject to rights of wife, should become property of children, widow was not entitled to testator's entire estate both real and personal with the exception of the personalty contained in "The Chalet" by "necessary implication" from express provisions of the will, where it was clear that testator intended that widow should have only an estate for life or widowhood in testator's estate.—*Willoughby v. Willoughby*, 19 A.2d 857, 66 R.I. 430.—Wills 478.

R.I. 1936. In construing will, conjecture must not be taken for implication, but "necessary implication" means, not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed to testator cannot be supposed.—*Bliven v. Borden*, 185 A. 239, 56 R.I. 283.—Wills 439.

Tenn.Ct.App. 1959. Only when implication of testamentary gift is necessary will it be made, and "necessary implication" is an implication forced by the words in which the will is written and not an implication made because without it there is no disposition of that part of estate of testator.—*Ross v. Stiff*, 338 S.W.2d 244, 47 Tenn.App. 355.—Wills 478.

Utah 1943. The term "necessary implication" is that which leaves no doubt, and in case of construction of instruments means not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed cannot be supposed.—*Palfreyman v. Trueman*, 142 P.2d 677, 105 Utah 463.

W.Va. 1949. The intention of the testatrix must govern unless it contravenes some principle of law and when not expressed such intention may be ascertained by necessary implication from the will considered in its entirety, and by "necessary implication" is meant a probability of intention so strong that an intention contrary to it cannot be imputed to the testatrix.—*Hunt v. Furman*, 52 S.E.2d 816, 132 W.Va. 706.—Wills 439.

W.Va. 1945. "Necessary implication" as applied to devises created thereby means so strong a probability of intention that an intention contrary to that imputed to testator cannot be supposed, and whole will taken together must produce conviction that testator's intention was to create the estate raised by the implication.—*Fisher v. West Virginia Gas Corp.*, 34 S.E.2d 123, 127 W.Va. 645.—Wills 478.

W.Va. 1931. Testator's intention to exclude heir from participation in estate must convincingly appear by express terms or by "necessary implication."—*Barker v. Haner*, 161 S.E. 34, 111 W.Va. 237.—Wills 452.

W.Va. 1921. A "necessary implication" within the meaning of the law governing construction of statutes is one that is so strong in its probability that the contrary thereof cannot reasonably be supposed.—*First Nat. Bank of Webster Springs v. De Berriz*, 105 S.E. 900, 87 W.Va. 477.—Statut 185.

W.Va. 1920. The purpose of construing wills is to arrive at the testator's intention, which must govern, unless it contravenes some principle of law, and when not expressed such intention may be ascertained by necessary implication from the will considered in its entirety. By "necessary implication" is meant a probability of intention so strong that an intention contrary to it cannot be imputed to the testator.—*Runyon v. Mills*, 103 S.E. 112, 86 W.Va. 388.—Wills 440.

W.Va. 1920. Where testator's intent is not expressed, it may be ascertained by "necessary implication" from the will considered in its entirety; that term meaning a probability of intention so strong that a contrary intention cannot be imputed to testator.—*Runyon v. Mills*, 103 S.E. 112, 86 W.Va. 388.—Wills 470(1).

W.Va. 1906. By "necessary implication," in such case, is meant so strong a probability of intention that an intention contrary to that, which is imputed to the testator, cannot be supposed.—*Coberly v. Earle*, 54 S.E. 336, 60 W.Va. 295.—Wills 439.

W.Va. 1905. The phrases "plain implication" and "necessary implication" have exactly the same meaning, when used in reference to the construction of deeds. By these is not meant a physical necessity, but a logical necessity. Where a clause is enlarged in its effect beyond the import of the

words used on the theory of an intent established by an implication, it must be necessary to so enlarge it in order to give effect to the plain and express provisions of other clauses, or the probability of intent must be so strong that the contrary thereof cannot be supposed.—*Griffin v. Fairmont Coal Co.*, 53 S.E. 2d, 59 W.Va. 480, 2 L.R.A.N.S. 1115.

NECESSARY IN AID OF

U.S. 1970. Where lower federal court denied railroad's request for injunction prohibiting union from picketing a switching yard, and railroad went into state court and succeeded in obtaining an injunction, and thereafter United States Supreme Court in another case decided that unions had a federally protected right to picket under Railway Labor Act and that that right could not be interfered with by state court injunctions, and subsequently state judge refused to dissolve injunction, holding that Supreme Court decision was not controlling, federal court was not justified in enjoining railroad from invoking state court injunction on theory that this was "necessary in aid of" its jurisdiction.—*Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 90 S.Ct. 1739, 398 U.S. 281, 26 L.Ed.2d 234.—Courts 508(2.1).

C.A.1 (Mass.) 1984. The "necessary in aid of" language in exception to federal Anti-Injunction Act for injunctions in aid of federal court jurisdiction or to protect or effectuate federal judgments incorporates the historical exception for cases in which a federal court obtains in rem jurisdiction prior to a state-court suit but it is not necessarily limited to in rem actions and is meant to give sufficient flexibility such that a federal court may deal adequately with the situation. 28 U.S.C.A. § 2283.—*James v. Bellotti*, 733 F.2d 989.—Courts 508(1).

NECESSARY IN AID OF ITS JURISDICTION

U.S. Ill. 1977. Where one vending machine company had obtained judgment in state court against controlling shareholder of a second vending machine company which the first vending machine company had acquired pursuant to an agreement which included anticompetition covenant, and where the controlling shareholder had brought an action in federal court claiming that the anticompetition agreement violated the Sherman Act, injunction by federal court against collection of the state court judgment did not fall within the "necessary in aid of its jurisdiction" exception to the Anti-Injunction Act. (Per Mr. Justice Rehnquist with two Justices concurring and the Chief Justice and one Justice concurring in the result.) *Sherman Anti-Trust Act*, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; *Clayton Act*, § 16, 15 U.S.C.A. § 26; 28 U.S.C.A. § 2283.—*Vendo Co. v. Lektro-Vend Corp.*, 97 S.Ct. 2881, 433 U.S. 623, 53 L.Ed.2d 1009, rehearing denied 98 S.Ct. 242, 434 U.S. 881, 54 L.Ed.2d 164, clarification denied 98 S.Ct. 702, 434 U.S. 425, 54 L.Ed.2d 659, on remand 500 F.Supp. 332, affirmed 660 F.2d 255, certiorari denied 102 S.Ct. 1277, 455 U.S. 921, 71 L.Ed.2d 461.—Courts 508(3).

C.A.6 (Mich.) 1978. Earlier order which stayed securities action pending decision in class action commenced in another district, and which could not be construed as restraining defendant bank from commencing state actions, was never intended to prevent defendant bank from initiating state collection suits and thus injunction against such state suits, after they were commenced by bank, by the district court was not "necessary in aid of its jurisdiction" on theory that institution of state suits would essentially nullify earlier stay order. 28 U.S.C.A. § 2283.—*Roth v. Bank of the Commonwealth*, 583 F.2d 527, on remand 1978 WL 1133, certiorari granted 99 S.Ct. 1420, 440 U.S. 944, 59 L.Ed.2d 632, certiorari dismissed 99 S.Ct. 2852, 442 U.S. 925, 61 L.Ed.2d 292.—Courts 508(2.1).

S.D.N.Y. 1992. "Necessary in aid of its jurisdiction" exception to general rule that federal court may not grant injunction to stay proceedings in state court applies when state court proceedings threaten to dispose of property which is basis for federal in rem jurisdiction. 28 U.S.C.A. § 2283.—*Attick v. Valeria Associates, L.P.*, 835 F.Supp. 103.—Inj 32.

NECESSARY, INCIDENTAL, APPURTENANT, OR CONNECTED WITH

N.Y. 1930. Injuries to truck driver distributing products in another city were not by reason of business operations "necessary, incidental, appurtenant, or connected with" operation of creamery within liability policy. *Workmen's Compensation Law*.—*Simpkins v. Steffen*, 174 N.E. 64, 255 N.Y. 65.—Work Comp 714.

NECESSARY, INCIDENT OR APPURTENANT

Tex.Civ.App.—El Paso 1959. Where workmen's compensation policy issued to one engaged in business of selling and applying agricultural chemicals did not exclude injury or death resulting from operation of aircraft, operation of airplane by employee of insured for purpose of applying insecticide to farm crops was "necessary, incident or appurtenant" to business operations of insured described in declarations within meaning of policy provision making policy applicable to injuries sustained by reason of such necessary, incident or appurtenant operations, though policy classified insured as a seed merchant and no premium was paid and no rate or classification for airplane pilots was included in policy. *Vernon's Ann.Civ.St. art. 8306 et seq.*—*Maryland Cas. Co. v. Sullivan*, 326 S.W.2d 729, affirmed 334 S.W.2d 783, 160 Tex. 592.—Work Comp 1065.

NECESSARY INFERENCE

Mich.App. 1996. For purposes of determining whether state's sovereign immunity is waived by necessary inference from statute, "necessary inference" is something less than express statutory enactment and requires something less than absolute certainty that it is only conceivable inference.—*Anzaldua v. Band*, 550 N.W.2d 544, 216 Mich.App. 561, appeal granted 568 N.W.2d 683, 456 Mich. 865, appeal granted 568 N.W.2d 683, 456 Mich.

865, appeal granted *Surowy v. Wayne State University*, 568 N.W.2d 684, 456 Mich. 865, appeal dismissed 570 N.W.2d 655, affirmed on other grounds 578 N.W.2d 306, 457 Mich. 530, appeal after remand 2001 WL 699941.—States 191.6(2).

Miss. 1942. A pleading is construed most strongly against the pleader, and a pleader may not rely on inferences to be drawn in his favor from the facts stated by him unless the inference is a "necessary inference", that is, one which is inescapable or unavoidable from the standpoint of reason, and an inference is not an "inescapable" or "unavoidable inference" if another and different inference may be reasonably drawn from the facts as stated.—*Taylor v. Twiner*, 9 So.2d 644, 193 Miss. 410.—Plead 34(3), 34(4).

NECESSARY INJURY

Mo. 1898. In Rev.St.1889, § 4427, V.A.M.S. § 537.090, providing that in an action for death by wrongful act the jury may award "such damages, not exceeding \$5,000, as they may deem fair and just with reference to the necessary injury resulting from such death," the words "necessary injury" are broad enough to include any damages which may be estimated according to a pecuniary standard, whether present, prospective, or proximate.—*Barth v. Kansas City El. Ry. Co.*, 44 S.W. 778, 142 Mo. 535.

Mo.App. 1939. The "necessary injury" resulting to parents from the negligent killing of a minor child, within meaning of statute dealing with damages for death, is the loss of the services of the child during minority, and medical and funeral expenses. V.A.M.S. § 537.090.—*McFetridge v. Kurn*, 125 S.W.2d 912.

Mo.App. 1928. Jury has large discretion under Death Statute in measuring "necessary injury" to survivors of deceased. Wrongful Death Statute. V.A.M.S. §§ 537.080, 537.090.—*Polk v. Krenning*, 2 S.W.2d 107.—Death 97.

Mo.App. 1919. In an action for wrongful death under Rev.St.1909, §§ 5426, 5427, V.A.M.S. §§ 537.080, 537.090, the question whether there was such dependency by those to whom the recovery would accrue under the laws of descent as to justify recovery, is not to be determined by strict legal dependency making deceased legally liable to furnish support, for the phrase "necessary injury" is broad enough to include any damages.—*McCullough v. W.H. Powell Lumber Co.*, 216 S.W. 803, 205 Mo.App. 15.—Death 18(3).

Mo.App. 1914. Under Rev.St.1909, §§ 5426, 5427, V.A.M.S. §§ 537.080, 537.090, providing that upon death by wrongful act, such as would, if death had not followed, have entitled the person injured to recover damages, and making the person, who would have been liable, liable in an action for damages at the suit of the husband or wife of deceased, and that the jury may give damages not exceeding \$10,000, with reference to the "necessary injury" to the surviving parties entitled to sue, the term "necessary injury" means pecuniary injury, and the cause of action is different from the action

for injuries resulting in death in certain cases given by section 5425, V.A.M.S. § 537.070, and is an action for damages and not for a penalty; and hence a surviving wife might sue for any amount within the statute in which she deemed herself damaged.—*Hawkins v. Missouri Pac. Ry. Co.*, 170 S.W. 459, 182 Mo.App. 323.

Mo.App. 1906. Under Rev.St.1899, § 2865, V.A.M.S. § 537.080, authorizing an action for the death of a person caused by wrongful act, etc., and section 2866, providing that the jury may give such damages as they may deem fair and just with reference "to the necessary injuries resulting from" such death, the measure of damages in an action by a parent for the wrongful death of his minor son does not include loss of comfort and society of the son; the words "necessary injury" meaning "pecuniary injury," and confining damages to property loss.—*Marshall v. Consolidated Jack Mines Co.*, 95 S.W. 972, 119 Mo.App. 270.—Death 88.

Mo.App. 1905. The term "necessary injury," as used in Rev.St.1899, § 2866, V.A.M.S. § 537.090, relating to damages in death actions, authorizing damages not exceeding \$5,000, as may be deemed fair and just with reference to the "necessary injury" resulting to the surviving parties, etc., does not include more than pecuniary injury.—*Brunke v. Missouri & K. Telephone Co.*, 87 S.W. 84, 112 Mo.App. 623.

NECESSARY LAND

Ind. 1972. Question of necessity for taking is not limited by consideration of absolute or indispensable needs of condemnor and "necessary land" is that which is reasonably proper, suitable and useful for purpose sought. (Per *Arterburn, C. J.*, one judge concurring and one judge concurring in result.) IC 1971, 32-11-3-1 to 32-11-3-3, *Burns' Ann.St.* § 3-1713 to 3-1715.—*Jensen v. Indiana & Michigan Elec. Co.*, 277 N.E.2d 589, 257 Ind. 599.—Em Dom 56.

Ind. 1946. "Necessary land" within statute authorizing condemnation of land deemed necessary to accomplish use for which property is taken, is that which is reasonably proper, suitable and useful for the purpose sought, and an absolute or indispensable necessity for the taking need not be shown. *Burns' Ann.St.* § 3-1713.—*Indianapolis Water Co. v. Lux*, 64 N.E.2d 790, 224 Ind. 125.—Em Dom 56.

Ind. 1946. In action by water company to condemn real estate, evidence that construction of dam raised level of stream approximately 4½ feet where it flowed through owner's land, that when reservoir was full, it permanently flooded a portion of the land and during time of high water flooded a great part of the remainder and that unflooded land was necessary for a border around the reservoir, established that land was "necessary land" within condemnation statute. *Burns' Ann.St.* §§ 3-1702, 3-1713.—*Indianapolis Water Co. v. Lux*, 64 N.E.2d 790, 224 Ind. 125.—Em Dom 196.

NECESSARY LESSER INCLUDED OFFENSE

Fla.App. 2 Dist. 1993. "Necessary lesser included offense" is always included in major offense.—Cox v. State, 618 So.2d 291.—Ind & Inf 191(0.5).

NECESSARY LITIGATION

Mont. 1937. Under statute imposing a penalty of 10 per cent. interest for deferring payment of inheritance taxes unless delay is the result of "necessary litigation," not including litigation to defeat payment of the tax, imposition of the penalty is limited to cases of unjustified litigation, leaving it to the court to determine whether grounds of opposition were meritorious, if the litigant be unsuccessful. Rev.Codes 1935, § 10400.6.—In re Clark's Estate, 74 P.2d 401, 105 Mont. 401, 114 A.L.R. 496.—Tax 906.

Or. 1938. Litigation resulting when payment of inheritance tax is resisted in good faith and on reasonable ground is "necessary litigation," within provision that, if tax is not paid within eight months from accruing thereof, interest shall be charged at rate of 8 per cent. from time tax is due unless, by reason of claims on estate "necessary litigation" or other unavoidable delay, tax cannot be determined and paid, on which case interest shall be charged at rate of 6 per cent. ORS 118.260.—In re Lowengart's Estate, 84 P.2d 105, 160 Or. 118.—Tax 901.

Or. 1938. Remaindermen who resisted payment of inheritance tax on interest under trust deed transferring note to trustee with directions to pay income to settlor's daughter for life, with provision that, should daughter predecease settlor, trust should terminate, but that, if daughter survived settlor, after death of daughter and termination of trust principal should be distributed among daughter's children, were not chargeable with interest at rate of 8 per cent. from date tax accrued, since litigation was "necessary litigation" within statute. ORS 118.260.—In re Lowengart's Estate, 84 P.2d 105, 160 Or. 118.—Tax 901.

Wis. 1928. Good-faith appeal from order fixing inheritance tax constitutes "necessary litigation" within statute providing for interest on delayed payments of tax. St.1925, §§ 72.06, 72.08 (W.S.A.)—Beck v. State, 219 N.W. 197, 196 Wis. 242, certiorari denied 49 S.Ct. 34, 278 U.S. 639, 73 L.Ed. 554.—Tax 901.

NECESSARY MEDICAL ATTENTION

Va. 1981. Under Workmen's Compensation Act, wife's services at home in attending to needs of disabled claimant were not compensable as "necessary medical attention" where care was not administered under direction and control of physician and care, which consisted of bathing, shaving, feeding, assisting in walking, helping with braces, aiding upon falling, driving, and administering routine medication, was not beyond scope of normal household duties or of type usually rendered only by trained attendants. Code 1950, § 65.1-88.—Warren Trucking Co., Inc. v. Chandler, 277 S.E.2d 488, 221 Va. 1108.—Work Comp 970.

Va.App. 1987. Statute requiring employer to furnish or cause to be furnished, free of charge to the injured employee, a physician and such other "necessary medical attention" vested the Industrial Commission with authority to require employer's worker's compensation carrier to do business with and directly pay the pharmacy chosen by the claimant for medications provided claimant furnished carrier with a current certification from the attending physician of the identity of each medication required for treatment of the injury and period for which the prescription was valid. Code 1950, § 65.1-88.—Woody's Auto Parts v. Rock, 353 S.E.2d 792, 4 Va.App. 8.—Work Comp 964.

NECESSARY MEDICAL EXPENSE

N.J. 1991. "Necessary medical expense" which is compensable pursuant to personal injury protection coverage provisions of Automobile Reparation Reform Act (No Fault Act), is one incurred for treatment, procedure, or service ordered by qualified physician based on physician's objectively reasonable belief that it will further patient's diagnosis and treatment, except for nonmedical remedial treatments consistent with recognized religious method of healing; use and method of treatment, procedure, or service must be warranted by circumstances and its medical value must be verified by credible and reliable evidence. N.J.S.A. 39:6A-2, subd. e, 39:6A-4.—Thermographic Diagnostics, Inc. v. Allstate Ins. Co., 593 A.2d 768, 125 N.J. 491.—Insurance 2831(1).

NECESSARY MEDICAL EXPENSES

Ga. 1992. Under settlement agreement entered in divorce proceeding requiring husband to pay wife's "necessary medical expenses," deceased husband's estate was liable for wife's monthly nursing home bill only to extent of expenses incurred, pursuant to physician's prescription, in hospital setting for equipment and services of medicinal or therapeutic nature, and not for expenses incurred to provide ordinary necessities of life.—Franklin v. Franklin, 416 S.E.2d 503, 262 Ga. 218.—Hus & W 279(1).

Ill.App. 1 Dist. 2001. Chiropractic care provided by chiropractor chosen by claimant, and neurological examination performed by neurologist upon referral from chiropractor, were "necessary medical expenses"; there was no evidence that chiropractic treatment was duplicative of physical therapy provided at orthopedic doctor's office, emergency room staff at hospital had recommended that claimant see a neurologist, and claimant, by seeking chiropractor's services, was obtaining a second opinion and receiving a treatment option that claimant may have believed could provide greater relief. S.H.A. 820 ILCS 305/8(a).—F & B Mfg. Co. v. Industrial Com'n of Illinois, 259 Ill.Dec. 173, 758 N.E.2d 18, 325 Ill.App.3d 527.—Work Comp 966.

La.App. 3 Cir. 1988. Employee's travel expenses in connection with weight reduction program to relieve pain and retard deterioration of arthritic knees were "necessary medical expenses" and were compensable following work-related injury to knees.

LSA-R.S. 23:1203, subds. A, C.—*Fontenot v. Citgo Petroleum Corp.*, 529 So.2d 69.—*Work Comp* 971.

N.J.Super.L. 1984. Medical expenses incurred, as result of automobile accident, for therapy, heat treatments, medication, exercises and other treatment designed to relieve pain, although not designed to effectuate a cure, are "necessary medical expenses" within meaning of N.J.S.A. 39:6A-4, subd. a, which requires automobile insurer to pay for all reasonable and necessary medical expenses as result of personal injuries sustained in automobile accident. N.J.S.A. 39:6A-1 et seq.—*Miskofsky v. Ohio Cas. Ins. Co.*, 497 A.2d 223, 203 N.J.Super. 400.—*Insurance* 2831(1).

N.J.Super.L. 1984. Evidence that insured, after reaching plateau in terms of recovery from injury causally related to automobile accident, continued to suffer pain, that her treating physician concluded that treatment would still benefit her in terms of effective relief from painful symptoms, and that, during those periods when her symptoms seem to subside, insured sought less treatment or discontinued treatment was sufficient to establish that expenses incurred for treatment of such symptoms were "necessary medical expenses" as defined in N.J.S.A. 39:6A-2, subd. e, 39:6A-4, subd. a, so as to require insurer to compensate insured for such expenses.—*Miskofsky v. Ohio Cas. Ins. Co.*, 497 A.2d 223, 203 N.J.Super. 400.—*Insurance* 2855.

Va.App. 1995. Expenses former wife incurred while caring for injured child at out-of-town facilities were "necessary medical expenses" incurred for daughter's benefit and justified modification of child support award from former husband where there was expert testimony that child needed family members present as key component of her rehabilitation.—*Carter v. Thornhill*, 453 S.E.2d 295, 19 Va.App. 501.—*Child S* 339(2).

NECESSARY MEDICAL SERVICES

S.D. Ohio 1974. Medical services required by a pregnant woman who decides to carry her child to term are "necessary medical services" within meaning of Social Security Act. Social Security Act, §§ 1901, 1902(a)(10)(A), (10)(C)(i), 42 U.S.C.A. §§ 1396, 1396a(a)(10)(A), (10)(C)(i).—*Roe v. Ferguson*, 389 F.Supp. 387, stay denied 389 F.Supp. 393, reversed 515 F.2d 279, 1 O.O.3d 293.—*Health* 474.

D.C. 1973. Medical policy providing coverage for "necessary medical services," including charges by a registered private duty nurse covered services by private nurses assigned by insured's surgeon for postoperative period during which insured was in severe pain and under constant medication to alleviate her suffering although not in danger of death.—*Group Hospitalization, Inc. v. Levin*, 305 A.2d 248.—*Insurance* 2497.

Fla.App. 1 Dist. 1978. Where insured suffered blow to his chest in automobile accident and where, because of insured's complaints of chest pain and because of his previous heart problem, insured's physician referred him to a cardiologist for a heart catheterization with coronary and renal arteriogra-

phy, expense incurred by insured for diagnostic work by cardiologist constituted expense for "necessary medical services," and thus expense was covered by personal injury protection policy, even though diagnostic work of cardiologist revealed that insured's chest problem related solely to his heart condition and had no relation to automobile accident. West's F.S.A. § 627.736.—*Banyas v. American Mut. Fire Ins. Co.*, 359 So.2d 506.—*Insurance* 2831(1).

N.J.Super.Ch. 1979. The term "necessary medical services" as used in the Medicaid Act is applicable to abortions even though health, not life, is endangered. Social Security Act, § 1901 et seq., 42 U.S.C.A. § 1396 et seq.—*Right To Choose v. Byrne*, 398 A.2d 587, 165 N.J.Super. 443.—*Health* 480.

NECESSARY MEDICAL TREATMENT

La.App. 3 Cir. 1999. "Necessary medical treatment" that an employer must furnish to a workers' compensation claimant includes palliative treatment necessary to relieve the claimant of the pain she suffers as a result of her disability as well as that designed to cure her work-related injury. LSA-R.S. 23:1203, subd. A.—*City of Jennings Police Dept. v. Dorr*, 736 So.2d 366, 1998-1921 (La.App. 3 Cir. 6/16/99), writ granted, reversed 750 So.2d 973, 1999-2109 (La. 11/5/99), rehearing denied 753 So.2d 227, 1999-2109 (La. 1/28/00).—*Work Comp* 971.

NECESSARY MUNICIPAL EXPENSE

N.C. 1947. Payment by city of cost of removing, from street, rails and facilities of holder of street railway franchise having 20 years to run, was a "necessary municipal expense" not required to be approved by popular vote and was not a granting to railway of an unconstitutional "special emolument not in consideration of public service" on theory that, since State Highway Commission had agreed to appropriate money to improve the street if the railway tracks were removed therefrom, the city would lose that money if the condition were not met, and that such loss came within franchise clause requiring railway to compensate city for loss growing out of construction and operation of railway and that railway, and not the city should pay for removing the tracks. G.S. § 160-2; Const. art. 1, § 7.—*Boyce v. City of Gastonia*, 41 S.E.2d 355, 227 N.C. 139.—*Mun Corp* 867(2), 873.

NECESSARY OF LIFE

Cal.App. 4 Dist. 1941. What is a "necessary of life", money required for which is exempt from execution, depends largely on circumstances of each case and position of family involved. Code Civ. Proc. § 690.11.—*Sanker v. Humborg*, 119 P.2d 433, 48 Cal.App.2d 205.—*Exemp* 36.

NECESSARY OPERATION EXPENSES

Cal.App. 2 Dist. 1997. Environmental cleanup costs incurred by oil and gas lease operator were "necessary operation expenses" for purposes of valuing oil and gas lease using income capitalization approach, where cleanup costs were required by

law, even if performance of cleanup projects ultimately benefited surface land owner. Cal.Code Regs. title 18, § 468.—Dominguez Energy v. County of Los Angeles, 65 Cal.Rptr.2d 766, 56 Cal. App.4th 839.—Tax 348.1(5).

NECESSARY OR APPROPRIATE

U.S.Cal. 1952. An order to secure prisoner's presence in sentencing court to testify or otherwise prosecute his motion to set aside sentence would be "necessary or appropriate" to exercise of such court's jurisdiction under statute authorizing such motion, and would be within scope of federal courts' authority to issue all writs necessary or appropriate, in aid of their respective jurisdictions and agreeable to usages and principles of law. 28 U.S.C.A. §§ 1651(a), 2241, 2255.—U.S. v. Hayman, 72 S.Ct. 263, 342 U.S. 205, 96 L.Ed. 232.—Crim Law 1659; Fed Cts 10.1.

NECESSARY OR CONVENIENT

Ky. 1940. Where mineral deed gave mining company right to discharge water on land subject to deed as might be "necessary or convenient," such right could not be exercised arbitrarily, capriciously, oppressively or wantonly, but was required to be exercised with due regard to and consistent with the interest and rights of the owner of the surface.—Inland Steel Co. v. Isaacs, 143 S.W.2d 503, 283 Ky. 770.—Mines 55(6).

Ky. 1940. Under mineral deed granting to mining company right to discharge water on land subject to deed as might be "necessary or convenient," the sudden release of an extraordinary amount of water from mines being drained was not within rights of mining company under its deed, but the reasonable and natural drainage of mines into a creek was within terms of deed even though it accelerated and increased the volume, and mining company could not be held liable for any resulting damages to land subject to mineral deed.—Inland Steel Co. v. Isaacs, 143 S.W.2d 503, 283 Ky. 770.—Mines 55(6).

Ky. 1940. Where mine owner in draining a mine permitted a great volume of water to flow into a stream which overflowed lower riparian owner's land which was excepted from a mineral deed giving mine owner right to discharge water on land subject to deed as might be "necessary or convenient," mine owner was liable for damages to the land.—Inland Steel Co. v. Isaacs, 143 S.W.2d 503, 283 Ky. 770.—Waters 45.

Or.App. 1974. Authorization to municipal corporation to do what is "necessary or convenient" is general grant of power, and regulation must meet reasonableness test.—Brookes v. Tri-County Metropolitan Transp. Dist. of Oregon ("Tri-Met"), 526 P.2d 590, 18 Or.App. 614.—Mun Corp 57.

NECESSARY OR CONVENIENT FOR COMMERCE AND NAVIGATION

Cal.App. 1 Dist. 1932. Municipal pier improvement on submerged lands owned by city held "necessary or convenient for commerce and navigation"

under statute, hence city obtained title to location of pier sufficient to order improvement. St.1911, p. 732, § 2, as amended by St.1927, p. 602, § 2; St.1915, p. 62.—Lloyd v. City of Redondo Beach, 12 P.2d 1087, 124 Cal.App. 541.—Nav Wat 22(1).

NECESSARY OR CONVENIENT FOR THE PUBLIC SERVICE

Md. 1922. The measure for determining whether the operation of a road is "necessary or convenient for the public service" within Laws 1910, c. 180, § 26½, as added by Laws 1914, c. 445, § 1, regulating abandonment of railroads, is the ability of the road from its earnings to meet operating expenses and fixed charges.—Benson v. Maloy [State report title: Benson v. Public Service Commission]CE, 118 A. 852, 141 Md. 398.—R R 57.

Mo.App.W.D. 1980. In regard to issuance of certificates of convenience and necessity, the phrase "necessary or convenient for the public service" is premised on the best public interest being served by adequate facilities.—State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission, 600 S.W.2d 147.—Pub Ut 113.

NECESSARY OR EXPEDIENT TO CARRY ON THE BUSINESS OF THE BANK

C.A.5 (La.) 1995. Federal land bank's issuance of standby letter of credit was not "necessary or expedient to carry on the business of the bank," and, thus, its act of honoring the letter was ultra vires, even though national banks are empowered to carry on business of banking and may issue letters of credit, and even though the letter of credit enabled land bank to keep major loan in current and healthy category on its books; Congress created federal land banks for sole purpose of providing long-term real estate mortgage loans. National Bank Act, 12 U.S.C.A. § 24; Farm Credit Act of 1971, §§ 1.4(21), 1.5, 2.15, as amended, 12 U.S.C.(1982 Ed.) §§ 2012(21), 2014, 2096; 12 C.F.R. § 7.7016.—REW Enterprises, Inc. v. Premier Bank, N.A., 49 F.3d 163, rehearing denied, rehearing and suggestion for rehearing denied 53 F.3d 1283.—Banks 405.

NECESSARY OR INCIDENTAL

C.A.2 (N.Y.) 1971. "Necessary or incidental," within statute permitting depletion allowance to processes necessary or incidental to beneficiation by concentration, requires not only that process be causally related to mining process but also that it be demonstrated to be essential or indispensable to performance of mining operation. 26 U.S.C.A. (I.R.C.1954) § 613(c) (2), (4) (D).—Barton Mines Corp. v. C. I. R., 446 F.2d 981.—Int Rev 3492.

Ind.App.1 Dist. 1976. Under garage liability policy providing coverage for garage operations, sale of reloaded shotgun shells was not "necessary or incidental" to maintenance or use of premises for purpose of garage, and thus policy would not apply to injuries resulting from malfunction and explosion of reloaded shotgun shells purchased at insured's service station.—Automobile Underwrit-

ers, Inc. v. Hitch, 349 N.E.2d 271, 169 Ind.App. 453.—Insurance 2867.

N.Y.A.D. 4 Dept. 1966. Use of portable welder to thaw frozen pipes in house off premises of automobile repair shop was not “necessary or incidental” to operation of shop and hence was not within coverage of garage liability policy covering operation of automobile repair shop and all operations necessary or incidental thereto.—Davis v. Hartford Acc. & Indem. Co., 267 N.Y.S.2d 463, 25 A.D.2d 604.—Insurance 2867.

N.Y.Sup. 1965. Use of portable welder to thaw frozen pipes in a house off the premises of automobile repair shop was not “necessary or incidental” to operation of shop and hence was not within coverage of garage liability policy covering operation of automobile repair shop and all operations necessary or incidental thereto.—Davis v. Hartford Acc. & Indem. Co., 264 N.Y.S.2d 335, 48 Misc.2d 135, modified 267 N.Y.S.2d 463, 25 A.D.2d 604.—Insurance 2867.

S.C.App. 1994. Attendance at national sales meeting of driver of rented automobile which struck pedestrian was “necessary or incidental” to driver’s employer’s garage operations, and thus, garage operations insurer of employer was liable for portion of settlement of underlying tort action brought by pedestrian, where employee’s attendance at meeting was required by distributorship agreement between his employer and company that sponsored meeting.—General Acc. Ins. Co. v. Safeco Ins. Companies, 443 S.E.2d 813, 314 S.C. 63.—Insurance 2867.

NECESSARY OR INCIDENTAL TO A GARAGE BUSINESS

N.C.App. 1999. Insured’s forcible repossession of car owned by customer who had not paid repair bill was not “necessary or incidental to a garage business” and was not part of “garage operations,” and, thus, the policy provided no liability coverage for customer’s death from gunshot; the insured had an available remedy by suit in small claims court to protect its possessory lien. G.S. §§ 44A-2(d), 44A-6.1(a).—North Carolina Farm Bureau Mut. Ins. Co. v. Weaver, 517 S.E.2d 381, 134 N.C.App. 359.—Insurance 2867.

NECESSARY OR INDISPENSABLE PARTIES

C.A.5 (Tex.) 1959. “Necessary or indispensable parties” includes all persons having an interest in the subject-matter of the suit, of such a nature that a final decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. Fed.Rules Civ.Proc. rule 19(a, b), 28 U.S.C.A.—Standard Oil Co. of Tex. v. Marshall, 265 F.2d 46, certiorari denied 80 S.Ct. 259, 361 U.S. 915, 4 L.Ed.2d 185.—Fed Civ Proc 202, 203.

D.N.M. 1989. Federal Highway Administration (FHWA) and New Mexico Highway Department were not “necessary or indispensable parties” in action brought by citizens to enjoin city which was

acting as lead agency in joint highway construction project from proceeding with project prior to preparation of adequate environmental assessment in accordance with the National Environmental Policy Act (NEPA). Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.; National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.—Dickman v. City of Santa Fe, 724 F.Supp. 1341.—Environ Law 657.

Cal.App. 1 Dist. 1949. In action for declaration of rights under written sub-lease, where trial court could save rights of owners without requiring them to appear and defend, owners were not “necessary or indispensable parties”. Code Civ.Proc. §§ 389, 1060, 1062.—Jones v. Feichtmeir, 212 P.2d 933, 95 Cal.App.2d 341.—Decl Judgm 296.

N.C. 1953. “Necessary or indispensable parties” are those whose interests are such that no decree can be rendered which will not affect them and, therefore, the court cannot proceed until they are brought in.—Gaither Corp. v. Skinner, 77 S.E.2d 659, 238 N.C. 254.—Parties 18, 29.

N.C. 1931. “Necessary or indispensable parties” are those whose interests are such that any decree rendered will affect them; hence court cannot proceed until they are brought in (C.S. § 457).—Wiggins v. Harrell, 156 S.E. 924, 200 N.C. 336.—Parties 29.

Tex.Civ.App.—Amarillo 1931. “Necessary or indispensable parties” include persons owning a part interest in the land in a suit to cancel a conveyance.—Bishop v. Sanford, 35 S.W.2d 800, writ dismissed w.o.j.

NECESSARY OR INDISPENSABLE PARTY

Ill.App. 1 Dist. 1979. A “necessary or indispensable party” is one whose presence in a suit is required for any of three reasons: (1) to protect an interest which the absentee has in the subject matter which would be materially affected by a judgment entered in his absence; (2) to reach a decision which will protect the interests of those who are before the court; or (3) to enable the court to make a complete determination of the controversy. S.H.A. ch. 110, § 25(1).—Lain v. John Hancock Mut. Life Ins. Co., 34 Ill.Dec. 603, 398 N.E.2d 278, 79 Ill.App.3d 264.—Parties 18, 29.

Ill.App. 1 Dist. 1959. A “necessary or indispensable party” is one who has such an interest that a final decree cannot be entered without materially affecting his interest or leaving interests of those who are before the court in a situation inconsistent with equity.—Field v. Oberwortmann, 159 N.E.2d 27, 21 Ill.App.2d 578.—Parties 18, 29.

Neb. 1999. “Necessary or indispensable party” to a suit is one who has an interest in the controversy to an extent that such party’s absence from the proceedings prevents the court from making a final determination concerning the controversy without affecting such party’s interest.—Holste v. Burlington Northern R. Co., 592 N.W.2d 894, 256 Neb. 713.—Parties 18, 29.

NECESSARY OR PROPER PARTIES

Ky. 1949. On candidate's appeal from judgment directing election commission to issue certificate of nomination to opponent, election commissioners were not "necessary or proper parties". KRS 122.060(2).—*Stevens v. Coleman*, 224 S.W.2d 149, 311 Ky. 313.—Elections 126(7).

NECESSARY OR PROPER PARTY

Fla. 1930. Indorser of mortgage note is not "necessary or proper party" defendant in foreclosure suit, and no deficiency decree may be entered against him (Comp. Gen. Laws 1927, § 6819; Laws 1927, c. 11993).—*Younghusband v. Ft. Pierce Bank & Trust Co.*, 130 So. 725, 100 Fla. 1088.—Mtg 427(1), 559(5).

Fla. 1930. Indorser of mortgage note is not "necessary or proper party" defendant in foreclosure suit. F.S.A. §§ 46.11, 702.06.—*Younghusband v. Ft. Pierce Bank & Trust Co.*, 130 So. 725, 100 Fla. 1088.—Mtg 427(1).

Fla. 1930. Indorser of mortgage note not being "necessary or proper party" defendant in foreclosure suit, no deficiency decree may be entered against him. F.S.A. §§ 46.11, 702.06.—*Younghusband v. Ft. Pierce Bank & Trust Co.*, 130 So. 725, 100 Fla. 1088.—Mtg 559(5).

Mo. 1942. Where there was no allegation that deceased's realty or any of income therefrom had been or would be needed to pay deceased's debts, administrator of deceased's estate was not a "necessary or proper party" to a proceeding to recover rental value of deceased's realty which accrued subsequent to deceased's death. Mo.R.S.A. § 129, V.A.M.S. § 462.280.—*Niederberg v. Golluber*, 162 S.W.2d 592.—Ex & Ad 439.

N.Y.A.D. 2 Dept. 1942. In proceeding by a surety company for a remission of bail forfeited, neither the comptroller nor the city treasurer of New York City is a "necessary or proper party" and cannot be a "party aggrieved" by an order remitting such bail so as to be entitled to appeal from such order. Code Cr.Proc. §§ 597, 598.—*Peerless Cas. Co. v. McGoldrick*, 34 N.Y.S.2d 973, 264 A.D. 179, appeal denied 37 N.Y.S.2d 743, 264 A.D. 956, affirmed 49 N.E.2d 132, 290 N.Y. 638.—Bail 79(2).

NECESSARY OR PROPER RELIEF BASED ON A DECLARATORY JUDGMENT

Mich. 1997. Award of monetary damages, in action challenging state's application of maintenance-of-support clause to state aid to local schools, was "necessary or proper relief based on a declaratory judgment" within meaning of governing rule; state's seven-year refusal to fulfill its obligations to fund state-mandated services as set forth in prior grant of declaratory judgment could not be cured by declaratory relief alone, and denial of monetary relief could have provided incentive for protracted litigation in future. M.C.L.A. Const. Art. 9, § 29; MCR 2.605.—*Durant v. State*, 566 N.W.2d 272, 456 Mich. 175, on subsequent appeal 575 N.W.2d 546, 456 Mich. 924.—Decl Judgm 388.

NECESSARY OR PUBLIC SERVICE

Minn.App. 2001. For purposes of principle that exculpatory agreement may be unenforceable if type of service being offered by exculpated party is either public or essential service, "necessary or public service" is a service subject to public regulation or of practical necessity for some members of the public.—*Beehner v. Cragun Corp.*, 636 N.W.2d 821, review denied.—Contracts 114.

NECESSARY OR REASONABLE

C.A.1 (N.H.) 1985. Regulation which required public housing project tenant to obtain management's prior approval for every overnight guest, and which allowed management unfettered discretion to approve or disapprove tenant's request, was not "necessary or reasonable" within meaning of Department of Housing and Urban Development regulation which requires tenants to abide by necessary and reasonable regulations promulgated by public housing agency for benefit and well-being of housing project, nor did regulation provide for reasonable accommodation of tenant's guests or visitors as required by another regulation.—*Lancor v. Lebanon Housing Authority*, 760 F.2d 361.—Mun Corp 717.5(4).

NECESSARY OR UNAVOIDABLE EXPENSES

La.App. 3 Cir. 2001. Coroner's legal fees incurred in funding dispute with police jury were not "necessary or unavoidable expenses" and, therefore, were not recoverable by the coroner, even though he had certified them as necessary and unavoidable; the attorney fees were not "incident to the operation and functioning of the coroner's office" as used in the statute entitling the coroner to all necessary or unavoidable expenses incident to the operation and functioning of the coroner's office. LSA-R.S. 33:1556, subd. B(1).—*Pavich v. St. Landry Parish Police Jury*, 780 So.2d 608, 2000-0587 (La.App. 3 Cir. 2/28/01), writ granted 803 So.2d 978, 2001-0872 (La. 12/14/01), on remand 812 So.2d 909, 2000-0587 (La.App. 3 Cir. 3/27/02), writ denied 803 So.2d 988, 2001-0869 (La. 12/14/01).—Coroners 7.

NECESSARY OR UNIQUE

Ct.Cl. 1977. Phrase "necessary or unique" as used in statute exempting from federal excise tax associated services related to a private communication system does not mean technologically essential to the use of an intercommunication system but rather, whether such services are appropriate and helpful to use of such system; hence, separate charges for Centrex associated services, such as switchboards, extension telephones and multibutton telephones, were not subject to the tax where they were appropriate and helpful to use of the private communication system. 26 U.S.C.A. (I.R.C.1954) § 4252(a), (d)(1, 2).—*Western Elec. Co., Inc. v. U.S.*, 564 F.2d 53, 215 Ct.Cl. 100.—Int Rev 4348.

NECESSARY OR USEFUL

Ariz.App. Div. 1 1997. Statute pursuant to which public service corporation may not sell, lease,

assign, mortgage, or otherwise dispose of or encumber whole or any part of its railroad, line, plant, or system "necessary or useful" in performance of its duties does not require state corporation commission approval every time public service corporation disposes of property; statute was intended to prevent "looting" of utility's facilities and impairment of service to the public, and its qualifying "necessary or useful" language was intended to protect public service corporations from expense of administrative proceedings when disposing of useless or unnecessary property. A.R.S. § 40-285, subd. C.—*Babe Investments v. Arizona Corp. Com'n*, 939 P.2d 425, 189 Ariz. 147, reconsideration denied.—Carr 10.

Ariz.App. Div. 1 1985. Contract between electrical and telephone utilities for joint pole rental was not voided by statute requiring Corporation Commission approval of agreement selling, leasing, assigning, mortgaging or otherwise disposing of or encumbering any part of system "necessary or useful" in performance of duties to public; pole space at issue was not "necessary or useful" within meaning of statute. A.R.S. § 40-285, subd. A.—*Arizona Public Service Co. v. Mountain States Tel. & Tel. Co.*, 717 P.2d 918, 149 Ariz. 239.—*Electricity* 9(1).

Or.App. 1993. Public Utility Commission reasonably concluded that address telephone directory and business and customer lists were "necessary or useful" to telephone company's performance of its duty to charge only reasonable and just rates to customers, and Commission thus had jurisdiction over company's proposal to abandon production of those products; directories and lists were revenue-producing activities and thus helped satisfy company's revenue requirement, which otherwise would have to be met by increased rates to customers. ORS 759.375(1)(a).—*Pacific Northwest Bell Telephone Co. v. Katz*, 853 P.2d 1346, 121 Or.App. 48, review denied 862 P.2d 1305, 318 Or. 25.—*Tel* 269.

NECESSARY OUTBUILDINGS

Mont. 1975. Use of term "necessary" within context of restrictive covenants pertaining to "necessary outbuildings" means convenient to dwelling.—*Higdem v. Whitham*, 536 P.2d 1185, 167 Mont. 201.—*Covenants* 51(2).

Wash. 1944. Covenant prohibiting erection or maintenance of any buildings other than private residence or dwelling and "necessary outbuildings" for residents' uses did not permit erection of farm buildings such as small barn, chicken house, rabbitry, and piggery for personal use of occupants of dwelling, even if the word "necessary" were construed as meaning convenient.—*Granger v. Boulls*, 152 P.2d 325, 21 Wash.2d 597, 155 A.L.R. 523.—*Covenants* 51(2).

NECESSARY PAPERS

Mass. 1939. A report of material facts in case constituted an essential part of the "necessary papers" within statute requiring appellant to give written order for preparation of necessary papers for completion of appeal. G.L.(Ter.Ed.) c. 231,

§ 135.—*Bass River Sav. Bank v. Nickerson*, 19 N.E.2d 56, 302 Mass. 235.—*App & E* 607(2).

NECESSARY PARTIES

U.S.Cal. 1895. The term "necessary parties" to a bill in equity is commonly used to designate formal parties.—*State of California v. Southern Pac. Co.*, 15 S.Ct. 591, 157 U.S. 229, 39 L.Ed. 683.

U.S.N.J. 1949. Where an insurer has become partially subrogated to the rights of an insured under the Federal Tort Claims Act, both are "necessary parties" but they are not "indispensable parties" and either party may sue, although in such case the United States upon timely motion may compel their joinder. 28 U.S.C.A. §§ 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671-2680; Fed.Rules Civ.Proc. rules 17(a), 19(b), 28 U.S.C.A.—*U.S. v. Aetna Cas. & Sur. Co.*, 70 S.Ct. 207, 338 U.S. 366, 40 O.O. 348, 56 Ohio Law Abs. 33, 94 L.Ed. 171, 12 A.L.R.2d 444.—*U S* 135.

U.S.N.J. 1939. Where New Jersey statutes assailed as unconstitutional were those prescribing a stay of suit or execution against any municipality and its coterminous school district in which municipal finance commission, composed of state officers, is functioning, and also statute permitting a compromise of delinquent taxes by such a municipality and school district, members of the commission were not "necessary parties" to suit to restrain the carrying of the statutes into execution, and therefore the suit was not one for which a court of three judges is prescribed by federal statute requiring suit to restrain enforcement of state statute by state officers to be heard by court of three judges. N.J.S.A. 1:1-10, 52:24-19.1, 52:14-32, 52:27-1 to 52:27-66; 28 U.S.C.A. §§ 1253, 2101, 2281, 2284.—*Wilentz v. Sovereign Camp, W.O.W.*, 59 S.Ct. 709, 306 U.S. 573, 83 L.Ed. 994.—*Courts* 101.

U.S.N.J. 1935. According to the decisions of the New Jersey courts, "necessary parties" mean those whose presence in a suit is essential as a jurisdictional prerequisite to the entry of judgment, so that no decree can be made respecting subject-matter of litigation until they are before the court.—*Broderick v. Rosner*, 55 S.Ct. 589, 294 U.S. 629, 79 L.Ed. 1100, 100 A.L.R. 1133.

C.A.D.C. 1954. "Necessary parties" are those affected by the judgment and against which in fact it will operate.—*West Coast Exploration Co. v. McKay*, 213 F.2d 582, 93 U.S.App.D.C. 307, certiorari denied 74 S.Ct. 850, 347 U.S. 989, 98 L.Ed. 1123.—*Fed Civ Proc* 202.

App.D.C. 1942. Generally, where an action involves a determination of conflicting interests of beneficiaries in a trust fund, the beneficiaries are "necessary parties." In actions respecting trust property brought either by or against the trustees, the beneficiaries as well as the trustees are necessary parties.—*Brown v. Christman*, 126 F.2d 625, 75 U.S.App.D.C. 203.

C.A.1 (Mass.) 1964. If there may be a viable judgment having separable affirmative consequences with respect to parties before court, and

inquiry is concerned solely with the inequities, in light of the total circumstances, resulting from inability to affect absent interested parties, such other parties should be defined as merely "necessary parties".—*Stevens v. Loomis*, 334 F.2d 775.—*Fed Civ Proc* 202; *Parties* 25.

C.A.10 (Okla.) 1961. Creditors to whom insured had assigned claims against fire insurers which had not consented to partial assignment were "necessary parties" to action against insurers.—*Phoenix Ins. Co. v. Woosley*, 287 F.2d 531.—*Insurance* 3567.

C.A.4 (Va.) 1992. In suits between parties seeking rescission of contract, all parties to contract, and others having substantial interests in it, are "necessary parties." *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.—*Delta Financial Corp. v. Paul D. Comanduras & Associates*, 973 F.2d 301.—*Fed Civ Proc* 202.

C.A.4 (Va.) 1992. In suit between certain partners over partnership assets or obligations in which the effect will be dissolution and liquidation of partnership, all partners are "necessary parties" and must be joined if feasible. *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.—*Delta Financial Corp. v. Paul D. Comanduras & Associates*, 973 F.2d 301.—*Fed Civ Proc* 227.

C.A.9 (Wash.) 1998. Private parties that obtained title to formerly public forest lands via contract between Bureau of Land Management (BLM) and land exchange company were "necessary parties," with respect to NEPA claim for a permanent injunction rescinding contract; district court could not grant relief sought without impairing or impeding private parties' interests. *National Environmental Policy Act of 1969*, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; *Federal Land Policy and Management Act of 1976*, § 206(a), 43 U.S.C.A. § 1716(a); *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.—*Kettle Range Conservation Group v. U.S. Bureau of Land Management*, 150 F.3d 1083.—*Environ Law* 657.

C.A.4 (W.Va.) 1999. Nondiverse Ohio plaintiffs, in asbestos tort action brought by Ohio and West Virginia plaintiffs in state court, were "necessary parties" to federal action to compel arbitration under earlier settlement agreement, from which petitioner sought to exclude the Ohio plaintiffs, because permitting the suit to continue in both the state and federal courts would likely subject all of the parties to conflicting legal obligations, as both courts were being asked to make determinations on the validity and interpretation of the settlement agreement. *Fed.Rules Civ.Proc.Rule* 19(a)(2)(ii), 28 U.S.C.A.—*Owens-Illinois, Inc. v. Meade*, 186 F.3d 435.—*Fed Civ Proc* 211.

C.A.10 (Wyo.) 1952. "Necessary parties" are generally said to be those within jurisdiction of court whose presence is necessary to complete adjudication of the controversy, but whose interests are separable and of such nature that court might proceed to final judgment in their absence, without adversely affecting them.—*Dunham v. Robertson*, 198 F.2d 316.—*Fed Civ Proc* 202; *Parties* 29.

C.C.A.6 1941. If the right asserted by Board is one arising solely out of contract, the performance of which does not inherently result in a violation of statute, beneficiaries of contract or their representatives are "necessary parties", and if contract is inherently unfair, or its performance will result in continuance of unfair labor practices, beneficiaries or their representatives are not "necessary parties" but may be made parties in discretion of the board. *National Labor Relations Act* § 10(b), 29 U.S.C.A. § 160(b).—*N.L.R.B. v. Indiana & Michigan Electric Co.*, 124 F.2d 50, certiorari granted *National Labor Relations Board v. Indiana & Michigan Electric Co.*, 62 S.Ct. 1276, 316 U.S. 657, 86 L.Ed. 1736, on remand 1943 WL 10046, affirmed 63 S.Ct. 394, 318 U.S. 9, 87 L.Ed. 579.—*Labor* 531.

C.C.A.8 (Ark.) 1943. "Necessary parties" are those who have an interest in the subject-matter and who are within the jurisdiction of the court but who are not so indispensable to the relief asked as would prevent the court from entering a decree in their absence.—*Division 525, Order of Ry. Conductors of America v. Gorman*, 133 F.2d 273.—*Parties* 18, 29.

C.C.A.8 (Ark.) 1932. Bankrupts were "necessary parties" to creditors' proceedings to vacate voluntary adjudications, and it was insufficient that receiver was party thereto.—*Chicago Bank of Commerce v. Carter*, 61 F.2d 986.—*Bankr* 2251.

C.C.A.9 (Cal.) 1942. In action by insured for reformation of furriers' customers basic fire policy and for enforcement of policy as reformed, insured's customers were "proper parties" but were not "necessary parties" and the only "indispensable parties" to the action were the parties to the policy.—*Morris v. Franklin Fire Ins. Co. of Philadelphia, Pa.*, 130 F.2d 553.—*Ref of Inst* 33.

C.C.A.9 (Cal.) 1940. A newly formed corporation organized pursuant to a reorganization plan, and a third party who invested money in the new corporation and subordinated his claim to that of the creditors, were "necessary parties" to order to show cause why an order should not be made directing corporate debtor to recognize the petitioner as a creditor, and directing debtor to include petitioner in the reorganization plan. *Bankr.Act* § 77B, as amended, 11 U.S.C.A. § 207.—*Standard Steel Works v. American Pipe & Steel Corp.*, 111 F.2d 1000.—*Bankr* 2205.

C.C.A.9 (Cal.) 1939. Though all co-owners of a joint cause of action are "necessary parties" in the sense that complete relief between all parties involved should be settled in a single suit, they are not "indispensable parties" in the sense that a judgment cannot be allowed to stand for the entire amount of damage in the absence of some of them.—*Anglo California Nat. Bank of San Francisco v. Lazard*, 106 F.2d 693, certiorari denied 60 S.Ct. 379, 308 U.S. 624, 84 L.Ed. 521.—*Parties* 18.

C.C.A.9 (Cal.) 1938. Claimants whose claims against bankrupt's estate were adjudicated by an order appealed from by one claimant were all "necessary parties" to the appeal, and in default of service of citation upon all of them, the Circuit

Court of Appeals could not proceed with the appeal, where a modification of the order could result either in a decrease in what the claimants not served would receive, or in their receiving nothing. 28 U.S.C.A. §§ 861a, 867.—*In re Knox-Powell-Stockton Co.*, 97 F.2d 61.—*Bankr* 3771.

C.C.A.9 (Cal.) 1930. Persons whose interest in equitable controversy is such that final decree cannot be made without affecting interest or leaving controversy inequitably terminated are "necessary parties."—*In re MacFarlane*, 45 F.2d 992.—*Equity* 94; *Fed Civ Proc* 202.

C.C.A.3 (Del.) 1940. Where American motion picture film distributing corporation executed distributing contract with English film producing company and its director under which corporate stock was purchased and corporation agreed to distribute English company's films, and subsequently corporation executed similar distributing contract with American company, English company and its director, and another company with which a distributing contract was executed pursuant to an inducing agreement with the American company, and the guarantor of such contract, were neither "indispensable parties" nor "necessary parties" to declaratory judgment action by American company and guarantor for declaration that corporation breached terms of the inducing contract, since no "justiciable controversy" existed between absent parties and American company and its director, whose interests were neither adverse nor similar to those of absent parties. 28 U.S.C.A. §§ 2201, 2202; *Fed.Rules Civ. Proc.* rule 19(a), 28 U.S.C.A.—*Samuel Goldwyn, Inc., v. United Artists Corporation*, 113 F.2d 703.—*Decl Judgm* 295.

C.C.A.8 (Mo.) 1943. Under Missouri law, all devisees and legatees are "necessary parties" to a will contest.—*Thomson v. Butler*, 136 F.2d 644, certiorari denied 64 S.Ct. 69, 320 U.S. 761, 88 L.Ed. 454, rehearing denied 64 S.Ct. 156, 320 U.S. 813, 88 L.Ed. 491.—*Wills* 267.

C.C.A.8 (Mo.) 1943. Under Missouri law, all devisees and legatees are "necessary parties" to any suit in equity to annul a judgment by which validity of a will has been established.—*Thomson v. Butler*, 136 F.2d 644, certiorari denied 64 S.Ct. 69, 320 U.S. 761, 88 L.Ed. 454, rehearing denied 64 S.Ct. 156, 320 U.S. 813, 88 L.Ed. 491.—*Wills* 355.

C.C.A.8 (Mo.) 1943. In proceeding by an heir at law to contest validity of a will, other heirs at law are not "necessary parties", under Missouri law, and question of validity of service on them is, therefore, immaterial, and such alleged invalidity cannot be claimed to be violative of due process for purposes of federal jurisdiction. *V.A.M.S.* § 473.083; *U.S.C.A.Const. Amend.* 14.—*Thomson v. Butler*, 136 F.2d 644, certiorari denied 64 S.Ct. 69, 320 U.S. 761, 88 L.Ed. 454, rehearing denied 64 S.Ct. 156, 320 U.S. 813, 88 L.Ed. 491.—*Fed Cts* 178; *Wills* 267.

C.C.A.8 (Mo.) 1937. The driver of insured automobile at time of accident and injured party's husband and sister, who had also sued driver, were not "necessary parties" to insurer's suit for declaratory

judgment that it was not obligated under automobile liability policy to pay judgment recovered by injured party against driver, in absence of any express requirement of statute that all interested parties must be joined. 28 U.S.C.A. §§ 2201, 2202.—*Western Cas. & Sur. Co. v. Beverforden*, 93 F.2d 166.—*Decl Judgm* 295.

C.C.A.9 (Mont.) 1938. The right, if any, of the United States and patentees, or successors in title of patentees, to whom the United States conveyed allotted lands in Crow Indian Reservation, or any of them, to divert or use waters of Lodge Grass creek, Little Big Horn river, and their tributaries, could not be determined in suit to which all owners of lands within the reservation were not parties, since all owners of lands within reservation were "necessary parties." Treaty with the Crow Indians May 7, 1868, 15 Stat. 649; Act April 11, 1882, 22 Stat. 42; Act Feb. 8, 1887, §§ 1, 5, 7, 25 U.S.C.A. §§ 331 and note, 348, 381.—*U. S. v. Powers*, 94 F.2d 783, certiorari granted 59 S.Ct. 69, 305 U.S. 581, 83 L.Ed. 366, affirmed 59 S.Ct. 344, 305 U.S. 527, 83 L.Ed. 330.—*Indians* 27(5).

C.C.A.3 (N.J.) 1941. Persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it are "necessary parties", but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice without affecting other persons not before the court, the latter are not "indispensable parties". Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience are "indispensable parties".—*Baird v. Peoples Bank & Trust Co. of Westfield*, 120 F.2d 1001, 136 A.L.R. 693.

C.C.A.6 (Ohio) 1941. Trustees in bankruptcy and officers of a corporation continued in possession in a bankruptcy reorganization proceeding derive their representative character from the law, and whenever a suit is instituted which affects such estates, all the creditors of the debtor have precisely the same interest but they are not "necessary parties" inasmuch as by law their interests are protected.—*Gochenour v. Cleveland Terminals Bldg. Co.*, 118 F.2d 89.—*Bankr* 2159.1, 3066(4.1).

C.C.A.10 (Okla.) 1929. Bondholders and judgment creditors were "necessary parties" to action to recover taxes levied to pay judgment for debts exceeding constitutional limitations (*Comp. St. Okl.* 1921, Secs. 219, 224, 9971; *Const. Okl.art.* 10, Sec. 26). Bondholders and judgment creditors were "necessary parties," within meaning of *Comp. St. Okl.* 1921, Secs. 219, 224, to action under section 9971, to recover taxes because of illegality predicated on contention that they were levied to create a sinking fund for the payment of certain judgments which were predicated on debts and certain funding

bonds which evidenced debts attempted to be incurred in violation of limitations contained in Const. Okl. art. 10, Sec. 26.—*St. Louis-San Francisco Ry. Co. v. Blake*, 36 F.2d 652.—Tax 543(5).

C.C.A.10 (Okla.) 1929. Bondholders and judgment creditors were “necessary parties” to action to recover taxes levied to pay judgment for debts exceeding constitutional limitations. *Comp.St.Okl.* 1921, §§ 219, 224, 9971, 12 *Okl.St.Ann.* §§ 231, 236, 68 *Okl.St.Ann.* § 263; *Okl.St.Ann.Const.* art. 10, § 26.—*St. Louis-San Francisco Ry. Co. v. Blake*, 36 F.2d 652.—Tax 543(5).

C.C.A.6 (Tenn.) 1939. That insolvent national bank’s unsecured creditors were not notified of proceedings which led to entry of decree providing for subrogation of surety to rights of obligees in bond which bank had executed to qualify as depository for funds of bankrupt estates was unimportant as respects effect of decree where creditors were represented by bank’s receiver, since they were not otherwise “necessary parties” to litigation.—*Maryland Cas. Co. v. Cox*, 104 F.2d 354.—Judgm 678(6).

C.C.A.5 (Tex.) 1936. In action in trespass to try title by lessee in an oil and gas lease, lessors held not “necessary parties,” since lessor and lessee in such a lease are cotenants, and one cotenant can sue for and recover title to whole tract for benefit of himself and cotenant as against one having no title.—*Murphy v. Sun Oil Co.*, 86 F.2d 895, certiorari denied 57 S.Ct. 754, 300 U.S. 683, 81 L.Ed. 886.—Tresp to T 26.

C.C.A.9 (Wash.) 1934. Persons having interest in subject-matter of litigation which may conveniently be settled therein are “proper parties,” those whose presence is essential to determination of entire controversy are “necessary parties,” but, if interests of parties before the court may be finally adjudicated without affecting interests of absent parties, presence of “proper parties” is not indispensable, whereas “indispensable parties” are those having such an interest in subject-matter of controversy that final decree between parties before the court cannot be made without affecting their interests or leaving controversy in such situation that its final determination may be inequitable.—*Chicago, M., St. P. & P.R. Co. v. Adams County*, 72 F.2d 816.—Equity 94.

E.D.Ark. 1979. Persons having interest in controversy, and who ought to be made parties, in order that court may act upon that rule which requires it to decide on, and finally determine entire controversy, and do complete justice, by adjusting all rights involved in it, are “necessary parties,” but persons who not only have interest in controversy, but interest of such nature that final decree cannot be made without either affecting that interest or leaving controversy in such condition that its final termination may be wholly inconsistent with equity and good conscience, are “indispensable parties.”—*Curtis v. United Transp. Union*, 486 F.Supp. 966, reversed 648 F.2d 492.—Fed Civ Proc 202, 203.

D.Colo. 1960. Persons who have interest in controversy, and who ought to be made parties, in

order that court may act on that rule which requires it to decide on, and finally determine entire controversy, and do complete justice, by adjusting all rights in it, are “necessary parties,” but if their interests are separable from those of parties before court, so that court can proceed to a decree, and do complete final justice, without affecting other persons not before court, latter are not “indispensable parties.”—*Blizzard v. Penley*, 186 F.Supp. 746.—Fed Civ Proc 202, 203.

D.Conn. 1942. Where the United States brought an action in Federal District Court for Connecticut to enforce a statutory penalty against insurer under a delinquent taxpayer’s life policy, and taxpayer and beneficiary were residents of Pennsylvania and were not parties subject to district court’s jurisdiction, and United States made no showing that it would not have been feasible to bring all parties before a federal court in Pennsylvania having jurisdiction over taxpayer, beneficiary, and insurer, dismissing action for lack of “necessary parties” would have been proper under district court’s discretion recognized in Federal Rule of Civil Procedure concerning effect of failure to join parties. 26 U.S.C.A. (I.R.C.1939) § 3710; *Fed. Rules Civ.Proc.* rule 19(b, c), 28 U.S.C.A.—*U.S. v. Aetna Life Ins. Co. of Hartford, Conn.*, 46 F.Supp. 30.—Int Rev 4858.

D.D.C 1938. A trust company authorized by act of Congress to act as administrator, executor, trustee, guardian, and in similar fiduciary capacities, is not engaged in the “practice of law” when acting in a fiduciary capacity on ground that beneficiaries are the real parties in interest and that company’s salaried attorneys really represent beneficiaries, since fiduciary has legal title and is the only party recognized in actions at law, and under equity rules beneficiaries are not ordinarily “necessary parties.”—*Merrick v. American Security & Trust Co.*, 22 F.Supp. 177, affirmed 107 F.2d 271, 71 App.D.C. 72, certiorari denied 60 S.Ct. 380, 308 U.S. 625, 84 L.Ed. 521.—Corp 377.5.

S.D.Fla. 2002. “Necessary parties” are those persons whom court determines must be joined to action if feasible, while “indispensable parties” are those necessary persons whose joinder is not feasible and in whose absence court determines action cannot proceed. *Fed.Rules Civ.Proc.* Rule 19, 28 U.S.C.A.—*BFI Waste Systems of North America, Inc. v. Broward County, Fla.*, 209 F.R.D. 509.—Fed Civ Proc 202, 203.

D.Idaho 1943. “Necessary parties” are those who had an interest in controversy, and should ordinarily be joined unless their interests are separable so that court can without injustice proceed in their absence.—*Arizona Lead Mines v. Sullivan Mining Co.*, 3 F.R.D. 135.

E.D.Ill. 1941. Persons having interest in the subject matter of litigation which may conveniently be settled therein are “proper parties,” those whose presence is essential to determination of the entire controversy are “necessary parties” but if the interest of parties may be finally adjudicated without affecting interests of absent parties, presence of

proper parties is not indispensable whereas "indispensable parties" are those having such an interest in the subject matter of the controversy that final decree between parties before the court cannot be made without affecting their interests or leaving the controversy in such situation that its final determination may be inequitable.—*Ford v. Adkins*, 39 F.Supp. 472.—Parties 14, 18, 25, 29.

E.D.Ill. 1940. Where nonresident grantee in oil lease brought suit to restrain resident defendants from interfering with grantee's rights and defendants filed counterclaim against grantee and grantor urging that grantor's title was held merely as security, others to whom grantor had conveyed interest in the real estate were not "indispensable parties" to determination of the issue raised by the original complaint but were "necessary parties" to complete adjudication of the questions raised by the counterclaim and counterclaimants were ordered to bring in the other parties or show why they were omitted. Fed.Rules Civ.Proc. rules 13(a, b, g, h), 19(b, c), 28 U.S.C.A.—*Carter Oil Co. v. Wood*, 30 F.Supp. 875.—Fed Civ Proc 232.

N.D.Ill. 1994. ERISA plans that did not intend to withdraw from real estate trust fund were not "necessary parties" to trustee's action against withdrawing plans, alleging that withdrawing plans' rejection of trustee's attempt to satisfy matured redemption requests by distributing to withdrawing plans cash and quitclaim deeds to undivided fractional interest in each of fund's real estate parcels violated terms of trust agreement and Office of Comptroller of Currency (OCC) regulations; non-withdrawing plans had legally cognizable interests only in fund real estate being held in fund liquidating account, which excluded withdrawing plans' rejected fractional interests and which was being sold as soon as feasible and prudent with periodical and ratable distributions of cash available after expenses. Employee Retirement Income Security Act of 1974, § 502(a)(3), 29 U.S.C.A. § 1132(a)(3); Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—*First Nat. Bank of Chicago as Trustee of Institutional Real Estate Fund F v. ACCO USA, Inc.-IBT Retirement Plan*, 842 F.Supp. 311.—Pensions 85.

N.D.Ill. 1979. Police officers who received promotions following examinations were "necessary parties" to civil rights action brought by police officers who alleged that village and various bodies and officials falsified and rigged results of the competitive examinations and unlawfully manipulated criteria for determining numerical rank of each candidate on statutorily mandated promotional eligibility roster; however, failure to join the promoted officers did not require dismissal of the complaint for reason that they were easily joinable. Fed.Rules Civ.Proc. Rules 12(b)(7), 19(a), 28 U.S.C.A.—*Hermes v. Hein*, 479 F.Supp. 820.—Fed Civ Proc 219, 1748.

N.D.Ill. 1941. In action for declaratory judgment that title to patents and trade-marks was in plaintiff by reason of a purported assignment from a corporation which had been dissolved by decree of an Illinois court before assignment, where defendant filed counterclaim asking that defendant be

found to be owner of patents and trade-marks as result of alleged assignment to defendant by corporation before dissolution, and assignment to plaintiff was a nullity, District Court would not decree title to be in defendant, since those who became owners of corporation's property after dissolution were "necessary parties". *Smith-Hurd Stats.Ill. c. 32, § 157.94*.—*Laning v. National Ribbon & Carbon Paper Mfg. Co.*, 40 F.Supp. 1005, modified 125 F.2d 565.—Decl Judgm 297.

E.D.Ky. 1943. "Necessary parties" are those who, though it is not always absolutely necessary that they be joined, are so far proper and desirable as parties that court will require them to be joined if it can be done without destroying court's jurisdiction over the cause. Fed.Rules Civ.Proc. rule 19, 28 U.S.C.A.—*Federal Gas, Oil & Coal Co. v. Casady*, 56 F.Supp. 824.—Fed Civ Proc 202.

E.D.La. 1936. In suit to obtain declaration that judgment rendered by State Supreme Court constituted bar to attempt by defendant to assert or establish title against complainant to mineral rights, owner of surface and owner of share in mineral rights who were nonresidents, and oil company holding leases from both complainant and defendants, held not "necessary parties". Declaratory Judgments Act, Jud.Code § 274d, 28 U.S.C.A. §§ 2201, 2202.—*Cockrell v. Board of Com'rs for Buras Levee Dist.*, 16 F.Supp. 273, reversed 91 F.2d 412, certiorari denied 58 S.Ct. 142, 302 U.S. 740, 82 L.Ed. 572.—Fed Civ Proc 225.

W.D.La. 1945. Persons having interest in subject matter of litigation which may conveniently be settled therein are "proper parties", whereas those whose presence is essential to determination of entire controversy are "necessary parties".—*Texas & P. Ry. Co. v. Brotherhood of R. Trainmen*, 60 F.Supp. 263.—Fed Civ Proc 103, 202.

D.Mass. 1977. In civil rights action by police officers against city officials for alleged violations of their constitutional rights in promotions procedure, police officers promoted ahead of plaintiffs were not "necessary parties" to the actions. Fed.Rules Civ.Proc. rule 19, 28 U.S.C.A.—*DeLuca v. Sullivan*, 450 F.Supp. 736.—Civil R 374.

D.Mass. 1966. Nonjoined post office employee organizations were "necessary parties" to action by employees, who had lost compensation, seniority and status under agreement negotiated by organizations, for declaratory judgment as to meaning, purpose, intent, scope and legality of agreement.—*Morris v. Steele*, 253 F.Supp. 769.—Fed Civ Proc 217.

D.Mass. 1942. Under federal rule, "indispensable parties" must be before court and "necessary parties" must also be before court unless jurisdiction over them can be acquired only by their consent or voluntary appearance, or unless, though they are subject to court's jurisdiction, their joinder would deprive court of jurisdiction of the parties before it. Fed.Rules Civ.Proc. rule 10(b), 28 U.S.C.A.—*McRanie v. Palmer*, 2 F.R.D. 479.—Fed Civ Proc 201.

D.Mass. 1942. In action for ejection from railroad car brought in Massachusetts federal district court against trustees appointed in proceedings for reorganization of railroad, one of whom resided in Massachusetts and the others in Connecticut, trustees residing in Connecticut were "necessary parties," but not "indispensable parties," and hence action was not dismissible because not brought in district of residence of all defendants. 28 U.S.C.A. §§ 959, 1391, 1401, 1693, 1695; Bankr.Act, § 77, and sub. j, 11 U.S.C.A. § 205, and sub. j; Fed. Rules Civ.Proc. rule 19(b), 28 U.S.C.A.—McRanie v. Palmer, 2 F.R.D. 479.—Fed Civ Proc 233; Fed Cts 91.

D.Mass. 1934. Generally, in equity, all persons materially interested, either legally or beneficially, in subject-matter of suit, are "necessary parties."—Monsarrat v. Monsarrat, 9 F.Supp. 374.—Equity 90.

E.D.Mich. 1995. Installers and users of home security systems were not "necessary parties" to products liability action brought by distributor which had purchased and resold systems against manufacturer of systems; due to joint and several liability distributor if successful would be able to obtain complete relief, absent parties would not be bound under doctrines of res judicata and collateral estoppel as their interests were not sufficiently identical to those of manufacturer, and manufacturer would not be subject to risk of double, multiple, or inconsistent obligations. Fed.Rules Civ.Proc. Rule 19(a), 28 U.S.C.A.—Intercept Sec. Corp. v. Code-Alarm, Inc., 164 F.R.D. 215.—Fed Civ Proc 211, 223.

W.D.Mich. 1960. "Necessary parties" are those who have an interest in the controversy but whose interests are separable and will not be directly affected by a decree rendered in their absence which does full justice between the parties before the court. Fed.Rules Civ.Proc. rules 17(a), 19(a), 28 U.S.C.A.—Horwich v. Price, 25 F.R.D. 500.—Fed Civ Proc 202.

E.D.Mo. 1952. "Necessary parties" are those who have an interest in subject matter and who are within jurisdiction of court but who are not so indispensable to relief asked as would prevent court from entering a decree in their absence.—Kuhn v. Yellow Transit Freight Lines, 12 F.R.D. 252.—Fed Civ Proc 202.

W.D.Mo. 1944. If there is a "justifiable controversy" between two of four parties to a written contract and such controversy can be disposed of as between plaintiff and defendant without joining other parties, the other parties, though they would be "proper parties," are not "necessary parties" to action for declaratory judgment for construction of the contract. 28 U.S.C.A. §§ 2201, 2202.—Greer v. Scarce, 53 F.Supp. 807.—Decl Judgm 295.

D.Neb. 1950. Persons having interest in subject matter of litigation which may conveniently be settled therein are "proper parties," those whose presence is essential to determination of entire controversy are "necessary parties," but, if interests of parties before court may be finally adjudicated

without affecting interests of absent parties, presence of "proper parties" is not indispensable, whereas "indispensable parties" are those having such an interest in subject matter of controversy that final decree between parties before court cannot be made without affecting their interests or leaving controversy in such situation that its final determination may be inequitable. Fed.Rules Civ. Proc. rule 19(a, b), 28 U.S.C.A.—Cather v. Ocean Acc. & Guarantee Corp., Limited, of London, England, 94 F.Supp. 511.—Fed Civ Proc 103, 202, 203.

D.Neb. 1950. Advancements of amount of fire loss by insurers to insured to extent of liability of insurers under policies issued by them, on condition that insured would repay insurers to extent of insured's recovery from third persons for loss sustained, constituted a "loan" and was not "payment" of the fire loss, and hence, insurers were not "necessary parties" in action against third party for fire loss, Fed.Rules Civ.Proc. rules 17, 19, 28 U.S.C.A.—Williams v. Union Pac. R. Co., 94 F.Supp. 174.—Fed Civ Proc 222.

E.D.N.Y. 1989. In action by limited partner against limited partnership for vindication of his rights as limited partner, all partners—general and limited—are "necessary parties"; furthermore, nondiverse citizenship between limited partner plaintiff and any one limited partner defendant destroys diversity jurisdiction. 28 U.S.C.A. § 1332; Fed.Rules Civ.Proc.Rule 19(b), 28 U.S.C.A.—Pappas v. Arfaras, 712 F.Supp. 307.—Fed Cts 302; Partners 370.

E.D.N.Y. 1963. Where subcontractor brought action under Miller Act against prime contractor on government contract, counterclaim of prime contractor against subcontractor and two officers thereof for false representations inducing execution of supplemental contract and payment of money thereunder was compulsory, and officers were "necessary parties" for complete relief, and ancillary jurisdiction over counterclaim could be extended to officers, regardless of lack of diversity. Miller Act, §§ 1, 2 as amended 40 U.S.C.A. §§ 270a and 270b; Fed.Rules Civ.Proc. rules 13(a, h), 19(b), 28 U.S.C.A.—U. S. for Use and Benefit of Central Rigging & Contracting Corp. v. Paul Tishman Co., 32 F.R.D. 223.—Fed Civ Proc 215, 777; Fed Cts 24.

E.D.N.Y. 1943. The last directors of a liquidated corporation, who were liquidating trustees and holders of the property the transfer of which it was sought to set aside, were the only "necessary parties" to action on account stated with liquidated corporation, and recovery of a judgment against the corporation was not a prerequisite to maintenance of the action. Federal Rules of Civil Procedure, rule 18(b), 28 U.S.C.A.following section 723c; Debtor and Creditor Law N.Y. Sec. 1 et seq.—United Shoe Machinery Corporation v. Becker, 51 F.Supp. 802.—Corp 630(3.5).

E.D.N.Y. 1943. The last directors of a liquidated corporation, who were liquidating trustees and holders of the property the transfer of which it was sought to set aside, were the only "necessary parties" to action on account stated with liquidated

corporation, and recovery of a judgment against the corporation was not a prerequisite to maintenance of the action. Fed.Rules Civ.Proc., rule 18(b), 28 U.S.C.A.; Debtor and Creditor Law N.Y. § 1 et seq.—United Shoe Machinery Corporation v. Becker, 51 F.Supp. 802.—Corp 630(3.5).

E.D.N.Y. 1939. Where complaint, in proceeding by citizen of New York against New Jersey corporations and individuals, showed that complainant purported to sue in the right of one corporation on behalf of himself and others as stockholders thereof, but indicated a grievance against second corporation and individuals, and, if sufficient proof were offered in support of pleadings, complainant would be entitled to a decree against second corporation to same extent as against individuals, and individuals were not “necessary parties” to controversy between complainant and second corporation, a “separable controversy” justifying removal to Federal District Court existed.—Schwartz v. Kaufman, 29 F.Supp. 803.—Rem of C 57.

S.D.N.Y. 1989. Subordinate union entities were not “necessary parties” to civil RICO action against union, its general executive board, individual members of board, and others associated with union; subordinate union entities did not have interest relating to “subject matter of the action,” as requested relief related to union, and did not directly affect rights of subordinate entities, and to extent that any rights of subordinate entities might be incidentally implicated, union had obligation to protect those interests. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—U.S. v. International Broth. of Teamsters, 708 F.Supp. 1388.—RICO 66.

S.D.N.Y. 1958. Those who ought to be made parties to action in order that complete relief may be accorded between those already parties are “necessary parties” within meaning of federal rule authorizing joinder of additional parties whose presence is required for the granting of complete relief in the determination of a counterclaim or cross claim. Fed.Rules Civ.Proc. rules 13(h), 19(b), 28 U.S.C.A.—S P A Ricordi Officine Grafiche v. World Art Reproductions Co., 22 F.R.D. 312.—Fed Civ Proc 202.

S.D.N.Y. 1942. In action for accounting as to profits from motion picture rights to play, wherein both parties claimed title to rights through playwrights’ assignee, and wherein complaint did not present question of whether any action by playwrights had defeated claim for relief, playwrights were not “necessary parties”.—Crosney v. Edward Small Productions, 52 F.Supp. 559.—Copyr 109.

S.D.N.Y. 1940. Where bill of complaint brought in New York court by citizen of New York against citizen of New York and three citizens of Massachusetts alleged participation of all four defendants in a common scheme to defraud plaintiff out of her share of proceeds received by Massachusetts defendants for an invention, which share plaintiff was allegedly entitled to under contract by which plaintiff and New York defendant agreed to take care of legal matters in connection with invention, bill stated a cause of action in tort in which all four

defendants were “necessary parties,” and hence cause was not separable, so as to authorize removal to federal District Court on motion of one of Massachusetts defendants. Jud.Code § 28, 28 U.S.C.A. § 71.—Hennock v. Silver, 34 F.Supp. 894.—Rem of C 57.

S.D.N.Y. 1939. In action by trustee in bankruptcy of corporation against defendant for breach of contract between two majority stockholders of corporation and defendant to loan money to the corporation, the majority stockholders were “necessary parties” rather than “indispensable parties,” and hence failure to join them did not warrant a dismissal of the complaint, but rather they would be joined as parties in accordance with court rule. Rules of Civil Procedure for District Courts, rule 19, 28 U.S.C.A. foll. § 723c.—Mahoney v. Bethlehem Engineering Corporation, 27 F.Supp. 865.—Fed Civ Proc 215.

S.D.N.Y. 1939. In action by trustee in bankruptcy of corporation against defendant for breach of contract between two majority stockholders of corporation and defendant to loan money to the corporation, the majority stockholders were “necessary parties” rather than “indispensable parties,” and hence failure to join them did not warrant a dismissal of the complaint, but rather they would be joined as parties in accordance with court rule. Fed.Rules Civ.Proc. rule 19, 28 U.S.C.A.—Mahoney v. Bethlehem Engineering Corporation, 27 F.Supp. 865.—Fed Civ Proc 215.

W.D.N.Y. 1942. Where nine insurance companies issued fire policies on certain building and seven of the companies brought action for judgment declaring that the policies were void, and restraining institution of action against plaintiff insurers for recovery on the policies, the two other insurance companies were “proper parties” but were not “necessary parties” or “indispensable parties”, since any determination in the action would not be “res judicata” as to the other companies and their liability, if any, was separable from the amount of liability of each other insurance company. Fed.Rules Civ.Proc. rule 19(a), 28 U.S.C.A.—Firemen’s Fund Ins. Co. v. Crandall Horse Co. of Buffalo, N.Y., 47 F.Supp. 78.—Fed Civ Proc 222.

E.D.N.C. 1953. Where original parties to partition suit conveyed their interests to others who were made parties as petitioner and respondent, original parties were neither “indispensable parties” nor “necessary parties” in view of fact that entire controversy could be determined without their presence.—Gregory v. West Virginia Pulp & Paper Co., 112 F.Supp. 8.—Partit 46.1.

E.D.Pa. 1962. Other employees whose seniority might be affected by change in returned veteran’s seniority and union to which they and returned veteran belonged were not “necessary parties” to action under Military Training and Service Act to compel employer to advance veteran’s position on seniority work roster. Fed.Rules Civ.Proc. rule 19(b), 28 U.S.C.A.; Universal Military Training and Service Act, § 9 and (b-d), 50 U.S.C.A.Appendix,

§ 459 and (b-d).—*Evancho v. U.S. Steel Corp.*, 32 F.R.D. 227.—*Armed S* 122(3).

M.D.Pa. 1951. “Necessary parties” are those whose presence is necessary to adjudicate the entire controversy, but whose interests are so far separable that the court can proceed to final judgment without adversely affecting them.—*Sechrist v. Palshook*, 95 F.Supp. 746.—*Fed Civ Proc* 202.

M.D.Pa. 1939. “Necessary parties” are those whose presence is necessary in order to adjudicate the entire controversy, but whose interests are so far separable that the court can proceed to final judgment without adversely affecting them.—*Wyoga Gas & Oil Corp. v. Schrack*, 27 F.Supp. 35, opinion adhered to on reargument 29 F.Supp. 582, appeal dismissed *Ritter v. Wyoga Gas & Oil Corp.*, 110 F.2d 524, certiorari denied 61 S.Ct. 29, 311 U.S. 669, 85 L.Ed. 430.—*Parties* 32.

W.D.Pa. 1948. If the interests of “necessary parties” are separable from those of the parties before the Court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, they are not “indispensable parties”.—*Steinberg v. American Bantam Car Co.*, 76 F.Supp. 426, appeal dismissed 173 F.2d 179.—*Fed Civ Proc* 203.

W.D.Pa. 1936. Stockholder-bondholder of debtor corporation held not entitled to order from bankruptcy court requiring trustees in bankruptcy of debtor corporation to appear as defendants in representative action in state court by stockholder-bondholder against trustees and directors to recover from directors for losses sustained by corporation by reason of wrongful acts and negligence of directors, since proceeding before bankruptcy court was a reorganization proceeding and trustees were not apparently “necessary parties” to action in state court.—*In re Pressed Steel Car Co of New Jersey*, 18 F.Supp. 362.—*Bankr* 2153.

W.D.S.C. 1941. A sheriff and his deputy were not “necessary parties” and “proper parties” to an action against surety on sheriff’s joint and several bond, since where the liability on a bond is joint and several all who are liable may be joined, or one or more or any number less than all may be sued at the option of the plaintiff, and an action may be maintained against the sureties, or one or more of them without joining the principal, or against the principal alone as well as against the principal in conjunction with any of the sureties, as the plaintiff may decide. Code S.C.1942, § 407; Federal Rules of Civil Procedure, rule 21, 28 U.S.C.A.—*McAlister v. Fidelity & Deposit Co. of Maryland*, 37 F.Supp. 956.—*Sheriffs* 166.

E.D.S.C. 1965. “Necessary parties” within rule requiring summoning of them are parties who have interest in pending suit and whose presence is necessary to afford complete relief between those already parties to the suit. Fed.Rules Civ.Proc. rule 19(b), 28 U.S.C.A.—*Kinard v. Pet Milk Co.*, 38 F.R.D. 305.—*Fed Civ Proc* 202.

E.D.S.C. 1954. “Necessary parties” are those whose presence may be necessary in order to adju-

dicate the controversy but whose interests are so far separable that the court can proceed to final judgment without adversely affecting them. Fed.Rules Civ.Proc. rule 19(b), 28 U.S.C.A.—*Edwards v. Rogers*, 120 F.Supp. 499.—*Fed Civ Proc* 202.

E.D.S.C. 1954. Tort-feasors who are jointly and severally liable are “necessary parties” and they should be brought in if they are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it. Fed.Rules Civ.Proc. rule 19(b), 28 U.S.C.A.—*Edwards v. Rogers*, 120 F.Supp. 499.—*Fed Civ Proc* 211.

E.D.Va. 1970. Term “necessary parties” for “joinder” purposes under Federal Rules of Civil Procedure means “desirable parties” rather than “indispensable parties”. Fed.Rules Civ.Proc. rule 19, 28 U.S.C.A.—*Bradley v. School Bd. of City of Richmond, Va.*, 51 F.R.D. 139.—*Fed Civ Proc* 202.

E.D.Va. 1944. All persons having any interest in property taken are “necessary parties” to a condemnation proceeding, and mortgage holders are entitled to be heard upon question of value of property taken, as well as upon question of extent of their claim upon proceeds awarded for it.—*U.S. v. Parcel of Land in Norfolk County, Va.*, 54 F.Supp. 901.—*Em Dom* 177.

S.D.W.Va. 1985. For purposes of recovering damages under Fair Labor Standards Act for gender-based wage discrimination, sheriff, circuit clerk, and county clerk were employers of 22 employees who worked in county offices in West Virginia, would be liable for any such discrimination, and, thus, were “real parties” defendant, while county commission and its three commissioners, who exercised general control of fiscal affairs of county, were “necessary parties” defendant, so that civil action against commission and commissioners was dismissed, and motion to amend complaint in separate action against sheriff, circuit clerk, and county clerk was granted to include commission and commissioners as defendants for sole purpose of requiring commission to appropriate necessary funds to pay any damage award employees might recover. Fed.Rules Civ.Proc.Rules 17(a), 19(a), 28 U.S.C.A.; Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C.A. § 201 et seq.; W.Va.Code, 7-7-7.—*Fury v. County Court of Wood County*, 608 F.Supp. 198, 27 Wage & Hour Cas. (BNA) 311.—*Labor* 1491.

S.D.W.Va. 1950. Where plaintiff instituted an action in state court against a bonding company to subject surety bonds to payment of amount of a judgment rendered in a prior action against principals on bonds, principals, who were residents of same state as plaintiff, were neither “indispensable” nor “necessary parties” to action, since no relief was asked against them, and, therefore plaintiff’s motion to remand would be overruled.—*Leadman v. Fidelity & Cas. Co. of N. Y.*, 92 F.Supp. 782.—*Rem of C* 31.

Bkrtcy.N.D.Ga. 1980. Although junior creditors would not be proper parties to adversary proceeding to lift stay, they were not “necessary parties”

within contemplation of Bankruptcy Rule since stay proceeding did not affect their ability to protect their interest in property. Rules Bankr.Proc. Rule 719(a).—*In re Northwest Recreational Activities, Inc.*, 4 B.R. 33.—Bankr 2438.

Ala. 1990. Shareholders were not “necessary parties” to action brought to impose constructive trust on major assets of corporation of which they were preferred shareholders and, thus, were not required to be joined as necessary parties inasmuch as complete relief could be afforded to parties to action without preferred shareholders’ being made parties. Rules Civ.Proc., Rule 19(a).—*American Family Care, Inc. v. Irwin*, 571 So.2d 1053, on subsequent appeal *Blake v. American Family Care, Inc.*, 599 So.2d 5.—Trusts 366(3).

Ala. 1959. All persons having material interest in litigation, or who are legally or beneficially interested in subject matter of suit and whose rights or interests are sought to be concluded thereby are “necessary parties”.—*Quinlivan v. Quinlivan*, 114 So.2d 838, 269 Ala. 642.—Parties 29.

Ala. 1953. In action by insurer for declaratory judgment that it had been discharged, on ground of insured’s alleged failure to cooperate, from liability and from duty to defend actions arising from accident involving insured automobile, persons, who were plaintiffs in actions brought against insured and arising from such accident, were “necessary parties” for purpose of determining proper venue. Code 1940, Tit. 7, §§ 166, 294; Tit. 28, §§ 11, 12; Gen.Laws 1951, p. 1224, §§ 19 to 21(f), subd. 1.—*State Farm Mut. Auto. Ins. Co. v. Sharpton*, 66 So.2d 915, 259 Ala. 386.—Venue 22(6).

Ala. 1949. Where bill in equity to cancel agreement entered into between defendant and a third party setting up a trust for complainant and tax deed or for redemption from tax sale did not seek to dispose of any interest in the property, but sought only to protect interest of complainant as life tenant in the property and its use during her lifetime, the remaindermen were not “necessary parties” to the bill.—*Edwards v. Brown*, 42 So.2d 249, 252 Ala. 618.—Tax 722(2), 806; Trusts 366(2).

Ala. 1946. Generally, in equity the holders of both legal and equitable interests are “necessary parties”.—*Walker County v. White*, 26 So.2d 253, 248 Ala. 53.—Equity 93.1.

Ala. 1945. Trust beneficiaries, though they own vested interest in trust property, are not “necessary parties” to trustee’s equity suit not affecting relations between trustee or trust estate and beneficiaries, as when trustee seeks to enforce a security or collect a debt for estate, nor to suit in equity by some person to reduce estate’s assets, as to which there is no conflict of interest between estate and beneficiaries, who are then represented by trustee.—*Mudd v. Lanier*, 24 So.2d 550, 247 Ala. 363.—Trusts 257.

Ala. 1945. An equity suit to enjoin trustee from voting corporation’s stock trust for any trustee or executor of deceased settlor’s estate as salaried officer of corporation, from using his own judgment

in voting stock, and from naming ousted cotrustee’s successor was within exception to rule that all known interested persons in being must be made parties for proceeding to affect them, so that trust beneficiaries were not “necessary parties” to suit, though equitable principle of virtual representation of numerous unknown interested persons in being was inapplicable. Code 1940, Tit. 7, Appendix; Equity Rules 30, 31(a).—*Mudd v. Lanier*, 24 So.2d 550, 247 Ala. 363.—Trusts 257.

Ala. 1944. A bill seeking to remove an estate from probate court to equity and also to have petitioner declared to be deceased’s widow, to have homestead set aside to her and to have petitioner and her children declared to be the only heirs as against next of kin listed by administrator, presented justiciable issues and petitioner’s children and deceased’s next of kin were “necessary parties” and entitled to notice. Code 1940, Tit. 7, § 674 et seq.; Tit. 13, § 139.—*Jacobs v. Murphy*, 16 So.2d 859, 245 Ala. 260.—Ex & Ad 473(2); Home 150(1).

Ala. 1944. In all suits in equity respecting lands of decedent, his heirs at law are “necessary parties”, and the administrator is a “proper party”.—*Jacobs v. Murphy*, 16 So.2d 859, 245 Ala. 260.—Equity 94.

Ala. 1944. In suit to enjoin Medical Society of Mobile County from violating its constitution by accepting as members two physicians whose applications for membership received adverse votes, physicians were “necessary parties”.—*Medical Soc. of Mobile County v. Walker*, 16 So.2d 321, 245 Ala. 135.—Health 295.

Ala. 1943. In suit to cancel a mortgage and foreclosure deed, where complaint alleged a series of mortgages given by complainant to secure the same debt, the last of which mortgages was given to respondent and by her foreclosed, and complaint did not affirmatively show that any other persons had any interest in the mortgage or asserted any claim therein, mortgagors under prior mortgages, or prior mortgagors’ heirs or administrator were not “necessary parties” to the bill. Code 1940, Tit. 47, § 164.—*Mathison v. Barnes*, 16 So.2d 717, 245 Ala. 289.—Mtg 311, 615.

Ala. 1943. In equity suits by testamentary trustees and beneficiaries to construe wills, all persons who are shown by the bill to be directly interested in the question sought to be settled are “necessary parties”.—*Morgan County Nat. Bank of Decatur v. Nelson*, 13 So.2d 765, 244 Ala. 374.—Wills 700.

Ala. 1943. Where bill makes allegations of fact which if true exclude any interest, persons there shown not to be interested are not “necessary parties” in litigation to settle controversies between others who are made parties.—*Morgan County Nat. Bank of Decatur v. Nelson*, 13 So.2d 765, 244 Ala. 374.—Equity 94.

Ala. 1943. Where devisees who were testatrix’ brothers-in-law predeceased her with no provision for that contingency in the will, the devisees lapsed and did not survive to testatrix’ other devisee as on the death of a joint tenant, and where testatrix left

no one capable of inheriting from her, the devisees escheated to the state, and the next of kin of such devisees were not "necessary parties" to bill to construe will. Code 1940, Tit. 16, § 25; Tit. 47, § 19; Tit. 61, § 16.—Morgan County Nat. Bank of Decatur v. Nelson, 13 So.2d 765, 244 Ala. 374.—Escheat 4; Wills 700, 775.

Ala. 1943. A bill by special administrator to reclaim an estate for administration, which estate consisted of realty and personalty, and to recover as assets certain items of such property and for instructions, was demurrable for nonjoinder of "necessary parties", where bill was filed after administration was removed to the circuit court in equity and decedent's heirs were not made parties. Code 1940, Tit. 61, § 120.—Little v. Gavin, 12 So.2d 549, 244 Ala. 156.—Ex & Ad 122(2).

Ala. 1942. In action to cancel deed of complainant's realty to respondents by one who purchased at mortgage foreclosure sale when respondents breached agreement to pay mortgage installments, wherein no relief was sought by complainants against mortgagee or purchaser at foreclosure sale, mortgagee and purchaser at foreclosure sale were not "necessary parties".—Averett v. Averett, 10 So.2d 16, 243 Ala. 357.—Can of Inst 35(3).

Ala. 1942. Where full and complete relief may be had between parties before the court, third persons who have had a hand in bringing about equities involved, but against whom no relief is sought, are not "necessary parties" if respondents are not prejudiced by their absence.—Averett v. Averett, 10 So.2d 16, 243 Ala. 357.—Parties 32.

Ala. 1942. In action to enforce a materialman's lien, mortgagees holding prior mortgage liens on the property on which the improvements had been erected were "proper" but not "necessary parties". Code 1940, Tit. 33, §§ 37, 38.—Polakow v. Weldon, 7 So.2d 85, 242 Ala. 505.—Mech Liens 263(7).

Ala. 1942. Where deed conveying land to college to be used as a place for education of white women provided that property should not revert to grantors, grantors were not "necessary parties" to proceeding to permit sale of strip of land under equitable doctrine of approximation. Code 1940, Tit. 58, § 57.—Heustess v. Huntingdon College, 5 So.2d 777, 242 Ala. 272.—Char 48(2).

Ala. 1941. Superior lienholders are "necessary parties" in an action if it affects their rights or if redemption is sought, but they are not necessary if the relief sought is subordinate to their rights and seeks no redemption.—Masters v. Chambers, 4 So.2d 261, 241 Ala. 623.—Parties 29.

Ala. 1939. In purchaser's suit for specific performance, subsequent purchaser from vendor with notice of contract, and municipality which claimed lien against realty, were "necessary parties," and bill including all such parties as defendants, was not multifarious. Code 1923, § 6526.—Taylor v. White, 188 So. 232, 237 Ala. 630.—Equity 150(2); Spec Perf 106(1).

Ala. 1933. To vacate sale of partner's interest on ground that he fraudulently sold or conveyed it

to his son and to condemn such interest to sale, only partner and his son are "necessary parties"; other partners being "proper parties" (Code 1923, § 7342).—First Nat. Bank v. Johnson, 148 So. 745, 272 Ala. 40.—Fraud Conv 255(1).

Ala. 1933. Where right is against tenant in common, other tenants are not "necessary parties," unless entire property is sought to be divided, sold, or otherwise affected.—First Nat. Bank v. Johnson, 148 So. 745, 227 Ala. 40.—Ten in C 55(4).

Ala. 1933. Where right and purpose of complainant is to separate debtor's share from that of other shareholders, and thereby cause division of jointly owned property, all shareholders are "necessary parties".—First Nat. Bank v. Johnson, 148 So. 745, 227 Ala. 40.—Ten in C 55(4).

Ala. 1933. Generally, persons materially interested in subject-matter whose rights are directly and necessarily affected by decree are "necessary parties".—Turnipseed v. Blan, 148 So. 116, 226 Ala. 549.—Equity 91.

Ala. 1928. Assignees subsequent to original mortgagee assigning all interest without recourse held not "necessary parties" to foreclosure suit.—Thompson v. Menefee, 118 So. 587, 218 Ala. 332.—Mtg 427(1).

Ala. 1928. Original mortgagee assigning all interest without recourse held not "necessary parties" to foreclosure suit.—Thompson v. Menefee, 118 So. 587, 218 Ala. 332.—Mtg 427(2).

Ala. 1927. All parties claiming interest in money collected by attorney held "necessary parties" to his suit to enjoin actions therefor. Code 1923, §§ 6262, 8935.—McLendon v. Truckee Land Co., 114 So. 3, 216 Ala. 586.—Inj 114(1).

Ariz. 1943. In action by motor carrier to recover license taxes paid under protest to superintendent of motor vehicle division of state highway department, the state and the members of the corporation commission were not "proper parties" or "necessary parties." Code 1939, §§ 66-518, 66-520 (A.R.S. §§ 40-641, 40-646, 40-648).—Winkler Trucking Co. v. McAhren, 133 P.2d 757, 60 Ariz. 225.—Autos 102.

Ariz. 1941. In taxpayer's action against county to recover taxes paid under protest on ground that tax rate levied by a city and a town within county exceeded maximum authorized by law, the city and the town were not "necessary parties" but court had the discretion to bring them in, since eventually they would be responsible to the county for any refund it might be required to make to taxpayer. Code 1939, § 16-213 (A.R.S. § 9-244).—Southern Pac. Co. v. Gila County, 109 P.2d 610, 56 Ariz. 499.—Mun Corp 977.

Ariz. 1939. Where attorneys engaged on contingent fee basis by county supervisors to prosecute certain case to conclusion were parties in trial court to a declaratory judgment action instituted to determine whether county supervisors had authority to employ special counsel, but case prosecuted by attorneys had been finally determined adversely to

county, attorneys were not "necessary parties" to appeal in the declaratory judgment action, since question regarding their rights was moot.—*Pima County v. Grossetta*, 97 P.2d 538, 54 Ariz. 530.—App & E 327(2).

Ariz. 1938. Interpleaders were not "necessary parties" to appeal from decree determining who was entitled to payment of note and mortgage, notwithstanding that interpleaders' tender was less than was claimed by conflicting claimants, where ascertainment of exact amount owing on note and mortgage was inconvenient, and interpleaders offered to pay such amount as the court might direct. Rev.Code 1928, § 4327.—*Hill v. Favour*, 84 P.2d 575, 52 Ariz. 561.—App & E 327(7).

Ariz. 1938. As respects statute governing "necessary parties" to suits for declaratory relief, an intervener may not be made a defendant unless he has a direct and immediate interest in the case so that the judgment to be rendered will have a direct and legal effect on his rights and not merely a possible and contingent equitable effect. Rev.Code 1928, § 4390 (A.R.S. § 12-1841).—*Miller v. City of Phoenix*, 75 P.2d 1033, 51 Ariz. 254.—Decl Judgm 306.

Ark. 1941. In suit to enjoin the closing of an alley on ground that public easement by prescription had been acquired, defendants' grantors, who conveyed property to defendants by warranty deed, would have been "proper parties", but were not "necessary parties".—*Kirby v. City of Harrison*, 148 S.W.2d 666, 202 Ark. 1.—Mun Corp 671(9), 697(4).

Ark. 1940. The heirs of a deceased partner, including minor heir, were not "necessary parties" to a suit in chancery court for purpose of winding up partnership and having a receiver appointed to conduct partnership business pending a settlement of partnership affairs, where their interests were represented by administrator of estate of deceased partner.—*James v. Wade*, 141 S.W.2d 13, 200 Ark. 786.—Ex & Ad 438(5).

Cal. 1940. Although "necessary parties" are so interested in the controversy that they should normally be made parties in order to enable the court to do complete justice, if their interests are separable from the rest and particularly where their presence cannot be obtained, they are not "indispensable parties" who are those without whom the court cannot proceed. Code Civ.Proc. § 389.—*Bank of California Nat. Ass'n v. Superior Court in and for City and County of San Francisco*, 106 P.2d 879, 16 Cal.2d 516.—Parties 18, 32.

Cal. 1940. Persons who are interested in an action in sense that they might possibly be affected by the decision, or whose interests in subject-matter are such that it cannot be finally and completely settled without them, but whose interests are so separable that a decree may be rendered between parties before the court without affecting those not before the court may be "necessary parties" to complete settlement of the entire controversy but are not "indispensable parties" required to be before the court in order for the court to render a valid judgment. Code Civ.Proc. § 389.—*Bank of*

California Nat. Ass'n v. Superior Court in and for City and County of San Francisco, 106 P.2d 879, 16 Cal.2d 516.—Judgm 16; Parties 18, 32.

Cal. 1940. In action for enforcement of agreement by which testatrix agreed to leave her entire estate to her niece, wherein only residuary legatee and executor were served with summons, other parties shown by complaint to own interests in the property and against whom the niece prayed for judgment were merely "necessary parties" and were not "indispensable parties" and hence the court had jurisdiction to proceed without them to determine the rights of the parties before the court. Code Civ.Proc. § 389.—*Bank of California Nat. Ass'n v. Superior Court in and for City and County of San Francisco*, 106 P.2d 879, 16 Cal.2d 516.—Spec Perf 106(1).

Cal. 1939. Minor children are "necessary parties" to an action to terminate a trust established in their favor by a property settlement executed by parents.—*Toomey v. Toomey*, 89 P.2d 634, 13 Cal.2d 317.—Trusts 56.

Cal. 1937. Where, pending action to restrain power company from using water contrary to contract, plaintiff sold part of its property to others, purchasers held not "necessary parties". Code Civ.Proc. § 385.—*Miller & Lux v. San Joaquin Light & Power Corp.*, 65 P.2d 1289, 8 Cal.2d 427.—Waters 158.5(2).

Cal.App. 1 Dist. 1958. The term "indispensable parties" refers to those without whom an action cannot proceed, while "necessary parties" are those whose presence, although desirable, may be dispensed with where equitable considerations require.—*Miracle Adhesives Corp. v. Peninsula Tile Contractors' Ass'n of San Mateo, Santa Clara and San Benito Counties*, 321 P.2d 482, 157 Cal.App.2d 591.—Parties 18, 29.

Cal.App. 1 Dist. 1950. Persons who should normally be made parties in order to enable court to do complete justice are "necessary parties", but if their interests are separable from the others, and particularly if their presence in the suit cannot be obtained, they are not "indispensable parties" without whom the court cannot proceed.—*Harrington v. Evans*, 221 P.2d 696, 99 Cal.App.2d 269.—Parties 18, 29.

Cal.App. 1 Dist. 1943. All parties interested in the trust were "necessary parties" to an action to impress a trust upon property of a deceased which had been distributed, and time during which an appeal was pending by some of the plaintiffs from an order dismissing the action as to them must be excluded in determining whether as to remaining plaintiffs case had been brought to trial within the five years provided by statute. Code Civ.Proc. §§ 378, 583.—*Westphal v. Westphal*, 143 P.2d 405, 61 Cal.App.2d 544.—Pretrial Proc 601; Trusts 366(1).

Cal.App. 1 Dist. 1943. Until employees knew whether lessees had been warned of defective flue in leased premises, lessees were "necessary parties" to action for loss of personal effects of employees

in fire resulting from defective flue and were properly joined with owners as parties defendant, though complaint in one count predicated liability on fraud and concealment by owners. Code Civ. Proc. §§ 379-379c.—Shotwell v. Bloom, 140 P.2d 728, 60 Cal.App.2d 303.—Land & Ten 169(2).

Cal.App. 1 Dist. 1943. Remaining heirs at law not joined in action by administrator and an heir at law to quiet title were not "necessary parties" to a determination thereof under statutes relating to administrator's right to sue. Code Civ.Proc. § 369; Prob.Code, §§ 573, 581.—Bank of America Nat. Trust & Sav. Ass'n v. Town of Atherton, 140 P.2d 678, 60 Cal.App.2d 268.—Ex & Ad 438(5).

Cal.App. 1 Dist. 1941. Where trial court finds, or record indisputably shows, that a complete determination of controversy cannot be had without presence of other parties, such parties become "necessary parties" and "indispensable parties", and statute respecting when trial court shall order other parties to be brought in is "mandatory", and question becomes one of jurisdiction in that the court may not proceed without bringing them in. Code Civ.Proc. § 389.—Bayle-Lacoste & Co. v. Superior Court of Alameda County, 116 P.2d 458, 46 Cal.App.2d 636.—Parties 51(1).

Cal.App. 1 Dist. 1940. Where county auditor and county treasurer were not made parties to a judgment creditor's action against county to collect fund due plaintiff's judgment debtor by virtue of a judgment against the county, and in favor of the judgment debtor, a judgment which ordered payment of such fund by county auditor to county clerk to be by clerk paid to plaintiff was unauthorized because a judgment against county can only be paid by auditor and treasurer who were therefore "necessary parties" defendant to the action.—Lloyd v. Los Angeles County, 107 P.2d 622, 41 Cal.App.2d 808.—Judgm 243.

Cal.App. 2 Dist. 1997. Omitted heirs are "necessary parties" to wrongful death action, and plaintiff heirs have mandatory duty to join all known omitted heirs in the single action for wrongful death. West's Ann.Cal.C.C.P. § 377.60.—Ruttenberg v. Ruttenberg, 62 Cal.Rptr.2d 78, 53 Cal. App.4th 801, rehearing denied, and review denied.—Death 42.

Cal.App. 2 Dist. 1956. Where persons are so interested in controversy that they should normally be made parties in order to enable court to do complete justice, but their interests are separable from the rest, they are "necessary parties" but not "indispensable parties".—In re Hensel's Estate, 301 P.2d 105, 144 Cal.App.2d 429.—Parties 18, 29.

Cal.App. 2 Dist. 1956. "Necessary parties" to action include persons interested in sense that they may possibly be affected by decision or having such interests in subject-matter or transaction involved that it cannot be finally and completely settled without them, but nevertheless so separable that decree may be rendered between parties before court without affecting such other parties, who are not "indispensable" to valid judgment in particular

case.—Reynolds v. Lerman, 292 P.2d 559, 138 Cal. App.2d 586.—Parties 18, 29.

Cal.App. 2 Dist. 1943. Where defendant executed note to plaintiffs, and, in agreement contemporaneously executed by plaintiffs, defendant, and others, defendant guaranteed note to plaintiffs, defendant and plaintiffs were the only "necessary parties" to action on defendant's note and guaranty, notwithstanding that plaintiffs might have made signatories to the guaranty agreement defendants. Code Civ.Proc. § 379 et seq.—Hahn v. Walter, 141 P.2d 925, 60 Cal.App.2d 837.—Guar 82(0.5).

Cal.App. 2 Dist. 1943. Unless other unnamed persons are concerned with and are necessary to determine the issues joined between the parties to an action, such others are not "necessary parties".—Hahn v. Walter, 141 P.2d 925, 60 Cal. App.2d 837.—Parties 18, 29.

Cal.App. 2 Dist. 1939. In proceedings to revoke admission of will to probate on ground of undue influence, persons who were neither beneficiaries under will nor heirs of decedent were not "necessary parties".—In re Hunt's Estate, 91 P.2d 609, 33 Cal.App.2d 358.—Wills 263.

Cal.App. 2 Dist. 1937. Both trustees and beneficiaries are "necessary parties" to an action under a trust in which the relation of the trustees and beneficiaries are involved. Code Civ.Proc. §§ 369, 389.—De Olazabal v. Mix, 74 P.2d 787, 24 Cal. App.2d 258.—Trusts 257.

Cal.App. 4 Dist. 1941. Where plaintiff sought among other things a permanent injunction restraining defendants from taking possession of or interfering with use and occupation of a strip of land embraced within a claimed easement to permit cattle to cross defendants' lands to drink from a creek thereon, and did not seek to determine the respective interests of all of her cotenants in the waters of the creek, those cotenants were not "necessary parties," and defendants could not complain because plaintiff was found to be entitled to take one-fourth of the waters subject to cotenants' rights. Code Civ.Proc. §§ 384, 389.—De La Cuesta v. Bazzi, 118 P.2d 909, 47 Cal.App.2d 661.—App & E 877(5); Ease 61(7).

Cal.App. 4 Dist. 1937. Mandamus to compel credit or refund of alleged overpayment of taxes paid under Vehicle Transportation License Tax Act would not lie against state comptroller alone, since state board of equalization and state board of control were "necessary parties". St.1933, p. 928, amended St.1935, p. 2176; Pol.Code, § 663 et seq. (repealed. See Govt.Code, § 13901 et seq.); § 3669, as amended by St.1935, p. 1688 (repealed. See Govt.Code, §§ 12621 et seq., 12952 et seq.)—Valley Motor Lines v. Riley, 70 P.2d 672, 22 Cal. App.2d 233.—Mand 151(2).

Colo. 1963. Those whose presence is essential to determination of entire controversy are "necessary parties". Rules of Civil Procedure, rule 19.—Woodco v. Lindahl, 380 P.2d 234, 152 Colo. 49.—Parties 18, 29.

Colo. 1941. In suit to foreclose a chattel mortgage, amended complaint, alleging that mortgagor conveyed all his property to his wife and children immediately before his death and that defendants, who were mortgagor's sons, were in possession of mortgaged property, refused to deliver it to plaintiff, and claimed to be sole absolute owners thereof, was not demurrable for nonjoinder of wife and other children, as such sons were only "necessary parties" so far as appeared on face of complaint.—*Paoli State Bank v. Barker*, 113 P.2d 1004, 108 Colo. 153.—*Chat Mtg* 275.

Colo. 1938. The holders of improvement bonds whose securities were required to be paid from special improvement tax were not "necessary parties" in action to quiet title to realty against purported lien of special improvement tax, bought by purchaser of the realty, on ground that City of Denver lost lien for special improvement tax because city treasurer, in compliance with statutory request for certificate of taxes due, furnished certificate which omitted the special improvement tax.

'35 C.S.A. c. 142, §§ 217–219.—*City and County of Denver v. Highlander Boy Foundation*, 79 P.2d 361, 102 Colo. 365.—*Mun Corp* 513(6).

Colo. 1936. Purchasers of land during pendency of litigation purchase at their peril and the one from whom they purchase continues the litigation as the representative of their interest, and they are not "necessary parties" to the suit.—*Klein Land Co. v. Thompson*, 63 P.2d 450, 99 Colo. 422.—*Lis Pen* 26(1).

Colo. 1934. Property owners agreeing to pay plaintiffs, as commission for selling mining property, any amount received above fixed sale price, held not "necessary parties" to plaintiffs' action against purchaser of property for agreed commissions, since owners had no interest in action on purchaser's agreement to pay commissions (Code, §§ 11, 16).—*Haldane v. Potter*, 31 P.2d 709, 94 Colo. 558.—*Brok* 81.

Colo. 1908. "Necessary parties" are all those who have an interest in the subject and object of the action, and all persons against whom relief must be obtained to accomplish the object of the suit.—*McLean v. Farmers' Highline Canal & Reservoir Co.*, 98 P. 16, 44 Colo. 184.

Conn. 1996. "Necessary parties" are those persons having interest in controversy, and who ought to be made parties, in order that court may act on rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all rights involved in it.—*Napolitano v. CIGNA Healthcare of Connecticut, Inc.*, 680 A.2d 127, 238 Conn. 216, certiorari denied 117 S.Ct. 1106, 520 U.S. 1103, 137 L.Ed.2d 308.—*Parties* 18, 29.

Conn. 1964. Nieces' children to whom principal of estate allegedly would be distributed at termination of widow's life estate if interest of testator's nephew in estate was determined not to be vested remainder would be affected by decision in action for judgment declaring whether the nephew's remainder was vested and were therefore "necessary

parties" upon whom personal service was necessary. Practice Book 1963, § 309(d).—*Brewster v. Brewster*, 206 A.2d 106, 152 Conn. 228.—*Decl Judgm* 256, 298.

Conn. 1948. In an action by a municipality through proper officers to recover, from veterans not domiciled in the state at time of induction and to whom exemptions had been given, taxes which they should have paid in the event that exemption statute did not extend to such veterans, veterans who received exemptions would be "necessary parties". Gen.St.Supp.1941, § 158f.—*Walsh v. Jenks*, 62 A.2d 773, 135 Conn. 210.—*Mun Corp* 978(8).

Conn. 1937. In trucking company's action against municipality for judgment declaring zoning regulation void, other residents and property owners affected by change, if it was void, were not "necessary parties," since municipality represented residents and property owners within its boundaries at least in so far as relief to company was concerned. Practice Book 1934, p. 78, § 250.—*National Transp. Co. v. Toquet*, 196 A. 344, 123 Conn. 468.—*Decl Judgm* 305.

Conn. 1937. Guarantors of third mortgage note were not "necessary parties" to action by holder of all three mortgages for foreclosure of first and second mortgages, and hence holder's failure to make guarantors parties to such action did not bar holder of its right of action against guarantors by reason of statute providing that foreclosure of mortgage should bar any further action on mortgage debt unless persons liable for debt were made parties to foreclosure (Gen.St.1930, § 5080).—*Bristol Bank & Trust Co. v. Broderick*, 189 A. 455, 122 Conn. 310.—*Guar* 78(1).

Conn.App. 2001. "Necessary parties" are those persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it.—1525 Highland Associates, LLC v. Fohl, 772 A.2d 1128, 62 Conn.App. 612, certification denied 1525 Highland Associates, Inc. v. Fohl, 774 A.2d 137, 256 Conn. 919.—*Parties* 18, 29.

Conn.App. 2000. "Necessary parties" are persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it; but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not "indispensable parties."—*Caswell Cove Condominium Ass'n, Inc. v. Milford Partners, Inc.*, 753 A.2d 361, 58 Conn.App. 217, certification denied 759 A.2d 1023, 254 Conn. 922.—*Parties* 18, 29.

Del.Ch. 1936. Where wife transferred corporate stock to son allegedly in violation of agreement with deceased husband under which trustees and

executors nominated by husband were to form new corporation and operate business with which husband was associated, injunction *held* not to lie in favor of son to restrain corporation formed by executors and trustees from asserting rights in any other court in shares of stock, where executors and trustees were not parties to suit for injunction, since court had no jurisdiction over executors and trustees who were "necessary parties" to complete adjudication of controversy and could not be concluded by decree in suit to which they were not parties.—*Peyton v. William C. Peyton Corporation*, 187 A. 849, 21 Del.Ch. 299.—Inj 114(3).

Fla. 1956. Though six tenants who had taken leases before rendition of decree against landlord which enjoined him from raising potatoes on the land were "necessary parties" to any proceeding involving their rights, they were not "indispensable parties" to adjudication of rights between landlord and other tenant, and decree was not void though it had no force as to the six tenants who were not made parties. F.S.A. Rules of Civil Procedure, rule 3.18.—*Alger v. Peters*, 88 So.2d 903.—Inj 114(3), 212.

Fla. 1943. Where supervisors of drainage district allowed certain property owners to pay off tax assessment against their property by use of outstanding and past due bonds of district at par and granted release of total tax, in mandamus action by holder of past due bonds of district to compel levy of additional tax, not in excess of assessed benefits, on all land in district including lands purportedly released, owners of released lands were not "necessary parties". F.S.A. § 298.01 et seq.—*State ex rel. Davis v. Jumper Creek Drainage Dist.*, 14 So.2d 900, 153 Fla. 451.—Mand 151(1).

Fla. 1942. In suit by purchaser of tax certificates against clerk of the circuit court for an accounting with respect to costs and fees incurred by county in suit to foreclose taxes on land covered by certificates, which purchaser was required to pay as prerequisite to issuance of certificates and which should have been collected from one seeking to redeem certificates and paid to purchaser, the former clerk of circuit court, in her official capacity, during whose incumbency both the purchase and attempted redemption of certificates occurred, and the redeeming owner, who had not paid such costs and fees, were "necessary parties". Acts 1937, c. 18296, §§ 3, 6.—*Pent v. Forest Hills Holding Corp.*, 5 So.2d 873, 152 Fla. 190.—Tax 742.

Fla. 1941. Where final decree, in suit to foreclose a lien evidenced by a tax sale certificate on realty, found for plaintiff's lien and also found that two of the defendants named in complaint had liens of equal dignity, an affirmation, reversal, or modification of such decree would affect interests of such defendants as well as plaintiff, and, hence, they were "necessary parties" to an appeal by owner.—*Miami Bank & Trust Co. v. Rademacher Co.*, 5 So.2d 63, 149 Fla. 24.—App & E 327(11).

Fla. 1941. Generally, parties having an interest in foreclosure property antagonistic or superior to interests of mortgagor and mortgagee are not "nec-

essary parties" or "proper parties" to foreclosure proceeding.—*Drawdy v. Lake Josephine Co.*, 1 So.2d 631, 149 Fla. 756.—Mtg 426, 427(1).

Fla. 1939. All persons materially interested in the subject matter of a suit and who would be directly affected by an adjudication of the controversy are "necessary parties".—*W. F. S. Co. v. Anniston Nat. Bank of Anniston, Ala.*, 191 So. 300, 140 Fla. 213.—Parties 18, 29.

Fla. 1939. Where purported counterclaim of co-defendant in foreclosure suit sought to impound proceeds of sale of mortgaged property pending outcome of codefendant's law action attacking a mortgage given by executors of a person allegedly indebted to codefendant and sale of mortgaged property by plaintiff, while acting as executor for estate of such person, on ground that mortgage and sale were fraudulently made to defeat codefendant's claim against estate, defendants in law action were "necessary parties" to awarding relief sought under counterclaim; and hence court, in foreclosure suit, could not grant relief under counterclaim when such parties were not before it.—*W. F. S. Co. v. Anniston Nat. Bank of Anniston, Ala.*, 191 So. 300, 140 Fla. 213.—Mtg 491.

Fla. 1939. In mandamus proceedings by alleged first applicant for a lease to certain water bottom lands which were illegally leased to others, to compel State Board of Conservation to rescind lease and to act upon application of petitioner, lessees to the lands were not "necessary parties" since, if alleged facts were true, lease vested no rights in them and they could not be affected by the judgment. F.S.A. §§ 373.01, 373.03, 373.05, 373.09 et seq., 375.01.—*State ex rel. Myers v. Cone*, 190 So. 698, 139 Fla. 437.—Mand 152.

Fla. 1939. Generally, only those who seek to compel the performance of a duty and those upon whom the duty is imposed are "necessary parties" to mandamus proceeding.—*State ex rel. Franklin County v. Lee*, 188 So. 775, 137 Fla. 658.—Mand 145, 151(1).

Fla. 1939. All counties were "necessary parties" to mandamus proceeding instituted by nine counties bordering Gulf of Mexico to compel state comptroller to apportion proceeds of second gas tax on basis of total land and Gulf of Mexico water area of counties, where each county was vitally affected and apportionment in such manner would completely disrupt fiscal system of some counties and have a marked effect on their credit and standing. Acts 1931, Ex.Sess., c. 15659.—*State ex rel. Franklin County v. Lee*, 188 So. 775, 137 Fla. 658.—Mand 151(2).

Fla. 1938. In mandamus to compel circuit judge to reinstate suit which he had dismissed and to modify order striking testimony taken before master, defendants in such suit were not "necessary parties".—*State ex rel. Goethe v. Parks*, 179 So. 780, 131 Fla. 741.—Mand 151(1).

Fla. 1937. In mandamus proceeding against official board of city to compel payment on bond coupons with city funds, relators in other manda-

mus proceedings seeking to recover such funds were not "necessary parties" in absence of showing that such relators had duties enforceable by the alternative writ, that they have claim on the identical fund, or that ample funds will not be available to satisfy all their claims.—*State ex rel. Jackson v. City of Hialeah*, 177 So. 609, 130 Fla. 370.—Mand 145.

Fla. 1932. Persons without whose joinder no effectual decree could be rendered in plaintiff's favor are "necessary parties."—*Pepple v. Rogers*, 140 So. 205, 104 Fla. 462.—Parties 29.

Ga. 1942. A person without any interest in the subject matter of an equity suit and who cannot be affected by the decree rendered therein is neither a "necessary" nor "proper party", but all persons directly interested in the result and who will be affected by the decree are "necessary parties."—*Pope v. U.S. Fidelity & Guaranty Co.*, 20 S.E.2d 13, 193 Ga. 769.—Parties 14, 18, 25, 29.

Ga. 1941. In suit against second wife and sole heir at law of plaintiff's deceased uncle to have title to described property decreed in plaintiff, by virtue of alleged agreement, charge on burden of proof, stating that meaning and effect of verdict for plaintiff would be that a decree would be entered declaring title in him, was not erroneous, on grounds that there was no prayer for specific performance, "necessary parties" were not before the court, second wife was not a party to alleged agreement, and that charge was unwarranted by pleadings and evidence. Code 1933, § 113–903, subd. 1.—*Miller v. Everett*, 14 S.E.2d 449, 192 Ga. 26.—Quiet T 47(1).

Ga. 1940. Though the city council of Atlanta acts through agents in the discharge of ministerial duties connected with the operation of its water system, it does not follow that such agents are "necessary parties" to a suit to compel the performance of duties which rest primarily on the council. Laws 1874, p. 116, §§ 39–51, as amended by Laws 1922, p. 529.—*Screws v. City of Atlanta*, 8 S.E.2d 16, 189 Ga. 839.—Mun Corp 1000(4).

Ga. 1936. Beneficiaries of life policy sued on held not "necessary parties" to bill of exceptions to review judgment for insured, where beneficiaries were not parties in trial court. Code 1933, § 6–916.—*Metropolitan Life Ins. Co. v. Saul*, 185 S.E. 266, 182 Ga. 284.—App & E 327(4).

Ga. 1936. Taxpayer's suit against transferee of city tax execution, city, marshal, and superior court clerk to enjoin levy and sale under execution and to cancel transfer and execution and records thereof kept by city and by clerk held not maintainable in county where all defendants save transferee were domiciled, where transferee was only defendant against whom substantial relief was prayed and other defendants were nominal, and not "necessary parties" (Code 1933, § 3–202; Const. art. 6, § 16, par. 3).—*Interstate Bond Co. v. Lee*, 184 S.E. 866, 182 Ga. 238.—Venue 22(6).

Ga. 1934. All persons interested in sustaining judgment are "necessary parties" in Supreme Court, and must be made parties defendant to bill

of exceptions and served with copy thereof (Civ. Code 1910, §§ 6160, 6176).—*Sistrunk v. Lipscomb-Weyman-Connors Co.*, 175 S.E. 12, 179 Ga. 48.—App & E 327(2).

Ga. 1932. In proceeding to enjoin foreclosure proceedings instituted by trustee under trust deed, wherein receiver was appointed, receiver and owner of property securing trust deed were not "necessary parties."—*City Bank & Trust Co. v. Graf*, 165 S.E. 238, 175 Ga. 340.—Mtg 413.

Ga. 1906. The words "necessary" and "indispensable" have sometimes been considered synonymous, and parties in equity have been classified as "necessary parties" and "proper parties."—*Railroad Commission of Georgia v. Palmer Hardware Co.*, 53 S.E. 193, 124 Ga. 633.

Ga.App. 1999. Mineral rights lessors were "necessary parties" to lessee's action against landowner for declaratory judgment that lessee was entitled to enter property and engage in various activities related to lessee's mining operations; ruling in favor of landowner could impair lessors' practical ability to realize value of their asserted marble and mineral rights by leasing those rights, and ruling in favor of landowner could also be followed by judgment against landowner in subsequent suit by lessors to determine ownership of land, which result would create inconsistent obligations on landowner's part. O.C.G.A. § 9–11–19(a)(2).—*J.M. Huber Corp. v. Georgia Marble Co.*, 520 S.E.2d 296, 239 Ga.App. 271, reconsideration denied.—Mines 55(8).

Ga.App. 1950. All persons who are interested in sustaining or reversing judgment of trial court are "necessary parties" on appeal, and must be made parties to bill of exceptions.—*Blaylock v. Ware*, 59 S.E.2d 274, 81 Ga.App. 498.—App & E 322, 327(2).

Ga.App. 1941. Where resident defendants and a nonresident defendant were jointly sued in the state court by resident plaintiff, and, on application by nonresident defendant, an order of removal to federal court was granted because of diversity of citizenship, and plaintiff excepted to order of removal but failed to make resident defendants, defendants in error with the nonresident defendant, the writ of error was required to be dismissed under statute, since the resident defendants were "necessary parties". Code, § 6–1202.—*White v. State Life Ins. Co.*, 16 S.E.2d 913, 66 Ga.App. 95.—App & E 327(7).

Ga.App. 1934. Where suit was dismissed as to defendants who demurred to petition, remaining defendants were not "necessary parties" to bill of exceptions brought by plaintiff to review judgment dismissing petition as to demurring defendants.—*H. A. Koch Co. v. Adair*, 176 S.E. 680, 49 Ga.App. 824.—App & E 323(1).

Ga.App. 1933. Where petition is dismissed upon general demurrer as to some of defendants, remaining defendants are not "necessary parties" to exceptions to judgment sustaining demurrer.—*Perkins v. Publix Theatres Corp.*, 171 S.E. 147, 47 Ga.App. 641.—App & E 327(5).

Ill. 1948. In suit to cancel contract for sale of realty to wife and her husband, since deceased, as supervisor of religious corporation, husband's assignees, representatives or heirs and such corporation were "necessary parties," in whose absence chancellor erred in determining merits.—*Georgeoff v. Spencer*, 79 N.E.2d 596, 400 Ill. 300.—*Can of Inst* 35(1).

Ill. 1943. Where mandamus compelling reinstatement of senior stenographer would necessitate discharging at least one of two other senior stenographers, the other senior stenographers were "necessary parties". *Smith-Hurd Stats. c. 24½, § 1 et seq.*—*People ex rel. Markee v. Barrett*, 48 N.E.2d 928, 383 Ill. 207.—*Mand* 151(2).

Ill. 1943. In mandamus to compel reinstatement of senior stenographer, where issues of identity of positions of senior stenographer and court reporter, and of plaintiff's right to position of court reporter, had dropped out of the case, court reporters were not "necessary parties". *Smith-Hurd Stats. c. 24½, § 1 et seq.*—*People ex rel. Markee v. Barrett*, 48 N.E.2d 928, 383 Ill. 207.—*Mand* 151(2).

Ill. 1943. Under trust agreements for sale of lots in subdivision providing that full legal and equitable title was to be vested in trustee and that individual beneficiaries were to have an interest only in the proceeds from rentals and sale of premises, beneficiaries' interests were only "personal property" and were not such as to make beneficiaries "necessary parties" to a suit to quiet title to the lots.—*Crawford Realty & Development Corp. v. Woodlawn Trust & Sav. Bank*, 47 N.E.2d 81, 382 Ill. 354.—*Quiet T* 30(3).

Ill. 1942. Under the Local Improvement Act providing that the lien of a judgment confirming special assessments shall run in favor of the municipality, ownership of lien is in municipality, and municipality is under a duty, which holders of special assessment bonds may compel it to perform, to use all lawful means, including foreclosure, to collect taxes out of which bondholders are to be paid, and bondholders are not "necessary parties" to any such proceedings. *S.H.A. ch. 24, §§ 84-56, 84-90.*—*Village of Lansing v. Sundstrom*, 39 N.E.2d 987, 379 Ill. 121.—*Mun Corp* 519(1), 565.

Ill. 1942. The general rule that beneficiaries of a trust are "necessary parties" to an action brought to foreclose their interests is subject to the exception that such beneficiaries are not necessary parties if their interests are so far represented by others that they receive actual and efficient protection, and to the exception that where the beneficiaries are very numerous, so that the delay and expense of bringing them in becomes oppressive and burdensome, they will not be deemed necessary parties.—*Village of Lansing v. Sundstrom*, 39 N.E.2d 987, 379 Ill. 121.—*Trusts* 257.

Ill. 1942. The holder of special assessment bonds bought bonds subject to provisions of the Local Improvement Act which empowered the municipality to bring a proceeding to foreclose the special assessment lien and did not give bondholders the right to be made parties, as against conten-

tion that bondholders are the equitable owners of the fund out of which the bonds are to be paid and as such are "necessary parties" to the foreclosure proceeding. *S.H.A. ch. 24, §§ 84-56, 84-90; c. 120, § 697.*—*Village of Lansing v. Sundstrom*, 39 N.E.2d 987, 379 Ill. 121.—*Mun Corp* 565.

Ill. 1942. In absence of a showing that municipality had failed to act or was acting in bad faith and a suggestion that municipality was not following the procedure prescribed by law, holders of special assessment bonds were not "necessary parties" to municipality's suit to foreclose the lien of a special assessment. *S.H.A. ch. 24, §§ 84-56, 84-90.*—*Village of Lansing v. Sundstrom*, 39 N.E.2d 987, 379 Ill. 121.—*Mun Corp* 565.

Ill. 1941. Where only question before circuit court in mandamus action was propriety of denial by city building commissioner of building permit incident to proposed use of property for commercial purposes, contiguous and neighboring property owners were not "necessary parties", since as members of general public they were fully represented by city officials, and hence such owners could not appeal from judgment ordering issuance of the permit. *S.H.A. ch. 110, §§ 74, 81.*—*People ex rel. Altorfer v. City of Peoria*, 39 N.E.2d 42, 378 Ill. 572.—*App & E* 327(7).

Ill. 1939. Adverse claimants and holders of title hostile to tenants in common are not "necessary parties" to partition suit.—*Albers v. Central Republic Bank & Trust Co.*, 22 N.E.2d 704, 372 Ill. 27.—*Partit* 46.1.

Ill. 1938. Under court rule providing that copy of notice by which appeal is perfected shall be served upon each appellee and upon any coparty who does not appear as appellant, where trustee in foreclosure proceeding was only a nominal party and heirs of mortgagor could not be affected by reversal of a decree of foreclosure, mortgagor's heirs and trustee were not "necessary parties" to an appeal by mortgagor's widow in foreclosure proceeding so as to necessitate service of notice of appeal upon heirs and trustee. *S.H.A. ch. 110, § 101.34; Rules of Appellate Court, rule 34.*—*Kaminskas v. Cepauskis*, 17 N.E.2d 558, 369 Ill. 566.—*App & E* 424.

Ill. 1925. All persons are "necessary parties" to litigation who have interest in subject-matter which will be materially affected. All persons are "necessary parties" to litigation who have interest in subject-matter which will be materially affected by decree.—*Mortimore v. Bashore*, 148 N.E. 317, 317 Ill. 535.—*Parties* 1.

Ill. 1925. All persons are "necessary parties" to litigation who have interest in subject-matter which will be materially affected.—*Mortimore v. Bashore*, 148 N.E. 317, 317 Ill. 535.—*Parties* 1.

Ill.App.1 Dist. 1989. If questions of liability insurance coverage are litigated, claimants against insured are ordinarily "necessary parties" to action.—*Flashner Medical Partnership v. Marketing Management, Inc.*, 136 Ill.Dec. 653, 545 N.E.2d 177, 189 Ill.App.3d 45.—*Parties* 18, 29.

Ill.App. 1 Dist. 1963. Contingent devisees and legatees, referred to in will as "children", were "necessary parties" to will contest and could be represented only by the statutory means and not by virtual representation. S.H.A. ch. 3, §§ 90, 91.—*Krunfus v. Winkelhake*, 194 N.E.2d 24, 44 Ill.App.2d 124.—Wills 267.

Ill.App. 1 Dist. 1946. In suit for partition of premises on which an apartment hotel was located and for the appointment of a receiver, tenants or guests of hotel, who numbered more than 300, were not "necessary parties".—*Mancou v. Trust Co. of Chicago*, 66 N.E.2d 515, 328 Ill.App. 592.—Partit 46.1.

Ill.App. 1 Dist. 1944. Under the Administration of Estates Act, all heirs at law of testator were "necessary parties" to suit to set aside instrument that had been admitted to probate as testator's last will. *Smith-Hurd Stats. c. 3, § 243*.—*Tidholm v. Tidholm*, 54 N.E.2d 745, 322 Ill.App. 691.—Wills 267.

Ill.App. 1 Dist. 1941. In suit for specific performance of agreement giving trust beneficiary a limited power of appointment, the creditors of the trust beneficiary were represented through her administrator de bonis non with will annexed and were not "necessary parties".—*Riggs v. Barrett*, 32 N.E.2d 382, 308 Ill.App. 549.—Spec Perf 106(1).

Ill.App. 1 Dist. 1940. In attorneys' suit to recover from trust estate fees in connection with defense of prior litigation against trustee and trust managers, trust beneficiaries were not "necessary parties", especially where trust agreement expressly provided that trustee was representative of beneficiaries and that beneficiaries need not be made parties to any action, suit, or proceeding involving the trust.—*Rothbart v. Metropolitan Trust Co.*, 30 N.E.2d 183, 307 Ill.App. 271.—Joint-St Co 19.

Ill.App. 1 Dist. 1937. In proceeding to foreclose mortgage executed by widow as testamentary trustee, testator's children held "necessary parties," although bequests to children were cash, and not realty, since property of estate was involved.—*Starck v. Goodman*, 6 N.E.2d 503, 288 Ill.App. 347.—Mtg 427(1).

Ill.App. 1 Dist. 1936. Persons made parties to proceeding to foreclose trust deed on ground that they were respectively tenant in possession of mortgaged premises, trustee named in trust deed, and judgment creditor of one of mortgagors, held not "necessary parties" to bill to review final decree in such foreclosure proceedings to correct amount of deficiency to include amount realized at execution sale under judgment vacated after entry of such final decree, where tenant was no longer in possession of premises, trustee had resigned, and judgment had been satisfied.—*Merrion v. O'Donnell*, 5 N.E.2d 765, 288 Ill.App. 47.—Equity 457.

Ill.App. 2 Dist. 1942. In bondholder's suit against village for accounting as to proceeds of improvement assessment installments, where complainant sought only its pro rata share of the proceeds of the special assessment, the remaining

bondholders were not "necessary parties" but would have been "proper parties".—*Grand Carniolian Slovenian Catholic Union v. Village of Rockdale*, 41 N.E.2d 218, 314 Ill.App. 308.—Mun Corp 955(1.5).

Ill.App. 2 Dist. 1937. Bondholders were not "necessary parties" to partial foreclosure suit instituted by trustee, not in bondholders' interest as cestuis que trust but in trustee's individual interest to fix its rights as purchaser of certain interest coupons and to reimburse it for expenses incurred as trustee, where trustee subordinated its demands to the unpaid bonds and interest coupons.—*Cody Trust Co. v. Hotel Clayton Co.*, 12 N.E.2d 32, 293 Ill.App. 1.—Parties 33.

Ill.App. 3 Dist. 1943. Township boards of school trustees were "necessary parties" and trustees individually "proper parties" to mandamus proceeding to compel trustees to call and hold concurrent meetings and act on petition for transfer of territory in different townships from one community high school district to another. *Smith-Hurd Stats. c. 122, §§ 46, 47, 54*.—*People ex rel. Chamberlin v. Trustees of Schools of Township No. 1 South, Range 5 West*, 49 N.E.2d 666, 319 Ill.App. 370.—Mand 151(2).

Ill.App. 4 Dist. 1942. In action for damages for removal of casing from an oil well by the lessee of an oil lease reserving one-eighth royalty to the lessor, the lessor was not a "necessary parties".—*Jones v. Jos. Greenspon's Son Pipe Corp.*, 40 N.E.2d 561, 313 Ill.App. 651, reversed 46 N.E.2d 67, 381 Ill. 615.

Ill.App. 4 Dist. 1937. In suit by tenants in common for partition and accounting, against complainant's cotenants and owner of one-half interest in lease executed by part of such cotenants, wherein no relief was asked which would affect terms of lease, and wherein it was stipulated that such owner of interest in lease was in possession representing whole ownership of lease, co-owners of lease were not "necessary parties".—*Fyffe v. Fyffe*, 11 N.E.2d 857, 292 Ill.App. 539.—Partit 48; Ten in C 55(4).

Ind. 1943. In appeal by remonstrators in drainage proceeding, all petitioners who were parties to the judgment are "necessary parties" to the appeal. *Rules of Supreme Court, rule 2-8*.—*Hayes v. Adams*, 49 N.E.2d 345, 221 Ind. 480.—Drains 36(3).

Ind. 1933. In original action before Supreme Court for mandate requiring trial court to grant application for change of venue, applicant's adversaries in case below are not "necessary parties". *Burns' Ann.St. §§ 2-1401, 3-2201*.—*State v. Pyle*, 184 N.E. 776, 204 Ind. 509.—Mand 151(1).

Ind.App. 1996. Proper parties, in foreclosure context, should be differentiated from "necessary parties," which are parties with ownership interest in property.—*Mid-West Federal Sav. Bank v. Kerlin*, 672 N.E.2d 82, rehearing denied, transfer denied *Mid-West Fed. Sav. v. Kerlin*, 683 N.E.2d 592.—Mtg 427(1).

Ind.App. 1940. Trial court did not abuse its discretion in refusing petition of certain stockhold-

ers of company which was in receivership to intervene in receivership proceedings for purpose of informing court of irregularities in the allowance of a judgment to one of intervening creditors, where record disclosed that receiver had filed motion for a new trial on allowance of such judgment, since stockholders were represented in the proceedings by the receiver and were not "necessary parties." Burns' Ann.St. § 2-222.—*Lighthill v. Garvin*, 27 N.E.2d 911, 108 Ind.App. 187.—*Receivers* 178.

Ind.App. 1940. In will contest proceeding, executrix and trustees designated in will were "necessary parties," and reference to such parties in their individual capacities was insufficient, where they were not sufficiently identified as executrix and trustees in caption or body of complaint. Burns' Ann.St. § 7-504.—*Moll v. Goedeke*, 25 N.E.2d 258, 107 Ind.App. 446.—*Wills* 267.

Ind.App. 1935. Where nonappealing plaintiffs' interests would be affected by any judgment that could be rendered on appeal, they were "necessary parties" to appeal, even if they were no longer interested in outcome of litigation.—*State ex rel. Michael v. Cooper*, 198 N.E. 119, 101 Ind.App. 588.—App & E 323(1).

Ind.App. 1935. Plaintiff, which recovered judgment of foreclosure and personal judgment against appellant and other defendants, and other defendants against whom personal judgment was rendered, held "necessary parties" on appeal which named as appellee only the defendant in whose favor personal judgment against appellant had been rendered.—*Hildebrand v. Strickland*, 194 N.E. 190, 100 Ind.App. 443.—App & E 327(3).

Iowa 1943. At common law even joint obligors living beyond jurisdiction of court who could not be subjected to personal service were not "necessary parties".—*Warnecke v. Foley*, 11 N.W.2d 457, 234 Iowa 348.—*Parties* 34.

Iowa 1939. In action by automobile owner against street car company for damages from collision, insurer which had made a partial payment to owner for the loss, and bank which held a mortgage on the damaged automobile were not "necessary parties." Code 1935, §§ 10967, 10973, 10981.—*Caligiuri v. Des Moines Ry. Co.*, 288 N.W. 702, 227 Iowa 466.—*Urb R* 30.

Iowa 1939. On appeal from decree fixing parties' interest in action to partition a cemetery lot, widow and children of one of the original grantees were "necessary parties" in whose absence the Supreme Court could not consider the appeal.—*Paulson v. Paulson*, 286 N.W. 431, 226 Iowa 1290.—App & E 327(7).

Iowa 1939. Where, in suit to partition real estate, all of appellees would be adversely affected by a reversal which would result in a new decree of distribution, all appellees were "necessary parties" to appeal and, where appellant had failed to timely serve abstract on all appellees, Supreme Court did not have jurisdiction of subject matter of appeal. Code 1935, §§ 12847, 12885, 12886.—*Herrold v.*

Herrold, 285 N.W. 274, 226 Iowa 805.—App & E 327(2).

Kan. 1973. "Necessary parties" are those who must be included in action either as plaintiffs or defendants, unless there is a valid excuse for their nonjoinder.—*City of Hutchinson for and on Behalf of Human Relations Commission of Hutchinson v. Hutchinson, Kansas Office of Kansas State Employment Service*, 517 P.2d 117, 213 Kan. 399.—*Parties* 18, 29.

Kan. 1967. "Necessary parties" are those who must be included in action either as plaintiffs or defendants unless there is valid excuse for their nonjoinder.—*Cities Service Oil Co. v. Kronewitter*, 428 P.2d 804, 199 Kan. 228.—*Parties* 18, 29.

Kan. 1951. "Necessary parties" defendant include those who have such interest in controversy that final decree cannot be made without either affecting that interest or leaving controversy in such condition that its final termination may be wholly inconsistent with equity and good conscience, and "indispensable parties" are those without whom court will not proceed to final decision.—*Poteet v. Simmons*, 229 P.2d 747, 171 Kan. 86.—*Parties* 18, 29.

Kan. 1948. Board of commissioners, having charge of property of county, were only "necessary parties" to action to enjoin removal of county seat to another town, and hence board's appeal from judgment granting the relief would not be dismissed because of failure to serve notice of appeal on six other county officers who were named individually as parties defendant, but who did not participate in the trial. Gen.St.1935, 19-212, 60-3306.—*Dunn v. Board of Com'rs of Morton County*, 194 P.2d 924, 165 Kan. 314.—App & E 415.

Ky. 1967. Cause of action for wrongful death is in the personal representative for benefit of next of kin who share recovery, if any, and next of kin are "real parties in interest", in that they share recovery, but they are not "necessary parties" to the action. KRS 391.010, 391.030, 411.130; Const. § 241.—*Totten v. Parker*, 428 S.W.2d 231.—*Death* 31(3.1), 41.

Ky. 1958. In controversies concerning title to realty, all persons who are interested under the title in litigation are "necessary parties".—*Lunsford v. Witt*, 309 S.W.2d 348.—*Parties* 29.

Ky. 1953. Where city enacted ordinance directing closing of portion of avenue and filed suit against owners of realty abutting on that portion of avenue which was to be closed, owners of lots on that portion of avenue which was not to be closed were not "necessary parties" and were not entitled to intervene. KRS 94.360.—*Powell v. City of Irvine*, 258 S.W.2d 706.—*Mun Corp* 657(5).

Ky. 1953. Judgment in ejectment action concerning location of boundary between certain lots of subdivision of farm fixed only the boundary between the lots in question and was not res judicata as to persons not parties to the action, and, therefore, other lot owners in subdivision were not "necessary parties" to the suit. Civ.Code Prac.

§ 28.—Blevins v. McKenzie, 257 S.W.2d 580.—Eject 45.

Ky. 1944. Under amendatory statute, requiring that all owners of ground in squares or lots divided by street sought to be closed abutting on such street be made defendants in action by city of Louisville to close street, "necessary parties" to such city's action to close portion of street are not restricted to persons owning property abutting on such portion, but all persons owning property abutting on street within block affected are necessary parties. KRS 93.360.—Riedling v. Harrod, 182 S.W.2d 770, 298 Ky. 232.—Mun Corp 657(5).

Ky. 1942. Persons to whom realty was devised by devisee named in owner's will were "necessary parties" to action for construction of the two wills for the purpose of determining whether owner's will devised a fee, or only a life estate to devisee under whom such persons claimed title.—Woods v. Hughes, 160 S.W.2d 339, 290 Ky. 99.—Wills 700.

Ky. 1942. Where land was devised to devisee with remainder over in case she should die without issue and devisee at time of action to sell land and invest proceeds had two sons both of whom were of age, the devisee and her two sons were the only "necessary parties" to action and it was not necessary to make the remaindermen parties. Civ.Code Prac. § 491.—Stone v. Campbell, 160 S.W.2d 325, 290 Ky. 32.—Remaind 16.

Ky. 1942. All the beneficiaries under a will are "necessary parties" to appeal from an order of the county court probating the will. Ky.St. § 4859.—Russell v. Grumbley's Ex'r, 160 S.W.2d 321, 290 Ky. 57.—Wills 361.

Ky. 1942. The statute requiring all "necessary parties" to be brought before the court by appellant upon appeal from a judgment of county court probating a will uses the quoted words as meaning parties in whose favor the probate court adjudged. Ky.St. § 4859.—Russell v. Grumbley's Ex'r, 160 S.W.2d 321, 290 Ky. 57.—Wills 361.

Ky. 1942. The statute providing that all "necessary parties" shall be brought before the court by appellant upon appeal from a judgment of county court probating a will enjoins upon appellant the duty of bringing before the court, while the proceedings are pending and before a trial is had, all persons who would have been interested in testator's estate had there been no will. Ky.St. § 4859.—Russell v. Grumbley's Ex'r, 160 S.W.2d 321, 290 Ky. 57.—Wills 361.

Ky. 1942. Once a will has been properly probated, it is conclusive and binding on all parties unless set aside on appeal to the circuit court in accordance with mode prescribed by statute, and hence, although contest of a will on appeal is a special proceeding in rem, it is given the character of an action inter partes, to which all beneficiaries vested with title to property devised are "necessary parties". Ky.St. § 4859.—Russell v. Grumbley's Ex'r, 160 S.W.2d 321, 290 Ky. 57.—Wills 361.

Ky. 1942. Nieces and nephews of testatrix, who would have been interested in her estate had there

been no will, and who were named as beneficiaries in the will, were "necessary parties" on appeal from judgment of county court probating the will. Ky.St. § 4859.—Russell v. Grumbley's Ex'r, 160 S.W.2d 321, 290 Ky. 57.—Wills 361.

Ky. 1941. Counties and school districts were "necessary parties" to action by Attorney General against Commissioner of Revenue and attorneys engaged by him to enforce collection of delinquent taxes and assessment of omitted property, for declaration as to validity of contracts between counties and school districts and attorneys for collection of delinquent taxes and listing of omitted property for purpose of taxation, and as to rights of parties to proceeds under such contracts. Civ.Code Prac. § 639a-9; Ky.St.Supp.1939, §§ 4257a-1 to 4259.—Commonwealth ex rel. Meredith v. Reeves, 157 S.W.2d 751, 289 Ky. 73.—Decl Judgm 302.1.

Ky. 1941. In mandamus proceeding to require defendants to levy tax and provide for payment of judgments against county, wherein trial court adjudged the claims to be for governmental expenses and directed that they should be paid by the treasurer pro rata with outstanding warrants of other persons holding similar claims, creditors having nongovernmental claims, bondholders whose bonds were payable from levy which could not be disturbed by the trial court's judgment, and persons holding claims or warrants for governmental expenses, were not "necessary parties" and were not required to be brought in by the court. Civ.Code Prac. § 28.—Elliott County v. Duvall, 151 S.W.2d 1040, 286 Ky. 841.—Mand 148, 153.

Ky. 1941. In father's action for desecration of his daughter's grave wherein mother intervened, the deceased daughter's brothers and sisters were neither "necessary parties" nor "proper parties" and were not entitled to intervene.—Johnson v. Kentucky-Virginia Stone Co., 149 S.W.2d 496, 286 Ky. 1.—Cem 20.

Ky. 1940. In city's action against taxpayer and citizen, individually and on behalf of all other taxpayers and citizens of city, for judicial approval of proposed bond issue to retire outstanding bonds at maturity, holders of the outstanding bonds to be refunded or renewed were not "necessary parties" required to be represented.—City of Frankfort v. Harrod, 143 S.W.2d 292, 283 Ky. 755.—Mun Corp 917(2).

Ky. 1940. In wife's suit for divorce and for cancellation of conveyances by husband on ground that they were made in fraud of wife's marital rights, husband's grantee and his wife were "necessary parties".—Harley v. Harley, 142 S.W.2d 992, 283 Ky. 725.—Divorce 276(2).

Ky. 1939. In taxpayer's action against a county board of education to recover money paid as taxes assessed for purposes of paying interest and retiring bonds issued for a school subdistrict, where money sought to be recovered had been paid before final determination of a prior taxpayers' suit enjoining collection of taxes for year in question, holders of outstanding bonds were not "necessary parties," especially where no direct action had been taken to

set aside the judgment in prior taxpayers' suit. Ky.St.1930, § 4426-3; Const. § 158.—Board of Educ. of Kenton County v. Louisville & N.R. Co., 134 S.W.2d 219, 280 Ky. 650.—Schools 105.

Ky. 1939. In action by a creditor of grantor to set aside a deed on ground that it was given to hinder and delay creditors, where trustee in bankruptcy of grantor and a creditor of grantor intervened praying that deed be set aside, on an appeal by grantee from a judgment setting aside deed, the interveners were "necessary parties" required to be joined or made appellees in statement of appeal. Civ.Code Prac. § 739.—Land v. Salem Bank, 130 S.W.2d 818, 279 Ky. 449.—App & E 327(2).

Ky. 1939. In action against electric company for death of workman who was electrocuted by company's electric wire, workman's employer and employer's compensation insurance carrier were not "necessary parties," notwithstanding pendency of workman's compensation claim. Ky.St. § 4890.—Kentucky-Tennessee Light & Power Co. v. Priest's Adm'r, 127 S.W.2d 616, 277 Ky. 700.—Work Comp 2223.

Ky. 1935. In action by county board of education against state highway commission to establish right of pupils attending county schools to free use of certain state toll bridges, holders of bonds issued to finance construction of such toll bridges held "necessary parties" where highway commission had agreed with bondholders to exempt from payment of toll for use of such bridges only two classes of travelers which did not include school children. Acts 1928, c. 172, § 6; Acts 1930, c. 157, §§ 4, 18; Ky. St. 1930, § 4439; Acts 1934, c. 161; Civ. Code Prac. § 28.—State Highway Com'n v. Henderson County Bd. of Educ., 86 S.W.2d 123, 260 Ky. 459.—Bridges 33.

Ky. 1928. In creditor's action to reach debtor's interest in trust fund, debtor's children, remaindermen under will establishing trust, held "necessary parties". Civ.Code Prac. §§ 23, 28.—Dority v. W.E. Rogers & Co., 3 S.W.2d 636, 223 Ky. 238.—Parties 32.

La. 1943. An individual, to whom foreign corporation sold personal property, and domestic corporation, to which such individual sold same property, were not "necessary parties" to suit against foreign corporation for money due plaintiff alleging in amended petition that such sales were simulations to place property beyond reach of defendant's creditors.—Martin-Owsley, Inc. v. Philip Freitag, Inc., 12 So.2d 270, 202 La. 554.—Corp 679.

La. 1940. Where action for trespass on land and for value of clam shells removed therefrom was brought by certain heirs of parties who had obtained title by adverse possession, against defendants who did not contest that title, and trial court entered judgment which purported to determine the interest of all heirs including some who were not parties, trial court's refusal to open the case after trial but before entry of judgment, to allow defendants to compel plaintiffs to bring in as "necessary parties" certain other heirs who claimed to be owners of the land and to have sole right to

damages recovered, was an abuse of discretion, since such heirs would not be bound by the judgment unless they were made parties, and might later establish a greater interest in the land than determined by the judgment.—De Hart v. Continental Land & Fur Co., 200 So. 9, 196 La. 701.—Parties 80(1).

La. 1938. A levee district to which lands which had been forfeited for nonpayment of taxes had been transferred, although defectively, and heirs to whom a portion of the land had been quitclaimed by the register of the state land office, were "necessary parties" to a proceeding to compel issuance of a certificate of redemption to the forfeited lands based on unconstitutionality of act purporting to validate the defective transfer to the levee district and unconstitutionality of act under which portion of the lands had been quitclaimed. LSA-R.S. 38:281 note, 38:700; Acts Nos. 99 and 161 of 1934.—State ex rel. Woods v. Register of State Land Office, 179 So. 38, 189 La. 69.—Mand 152.

La. 1937. De facto officers of corporation other than secretary were "necessary parties" to mandamus proceedings by stockholder as such and as administratrix of a succession owning a majority of stock of corporation to compel the holding of a stockholders' meeting and to have it decreed that she was entitled to vote in her capacity as administratrix the stock belonging to succession and that certain proceedings had by a minority of the stockholders were void, as against contention that calling a meeting was merely a ministerial duty of the secretary. LSA-R.S. 12:30(2).—Davidson v. American Paper Mfg. Co., 175 So. 753, 188 La. 69, 114 A.L.R. 1044.—Mand 151(1).

La. 1934. Where plaintiff, having recovered less than amount claimed, appealed from judgment which defendant had already paid, persons to whom plaintiff had assigned judgment held not "necessary parties" to appeal.—H.F. Hinricks & Son v. Lewis, 158 So. 11, 180 La. 898.—App & E 327(3).

La. 1932. Receivers of defendant corporation, appointed pending hearing of defendant's appeal from plaintiffs' judgment against it held not "necessary parties" to appeal. Rules of Supreme Court, rule 14, § 4.—Armstrong v. Louisiana Ice & Utilities, 145 So. 1, 175 La. 1041.—App & E 322.

La. 1932. Receivers of defendant corporation were not "necessary parties" to the appeal, in view that Rules of the Supreme Court, rule 14, s 4, relied upon as requiring the receivers to become parties to the appeal, by its terms applies only to corporations whose charters have expired, and that the issues presented by the appeal were between defendant corporation and plaintiffs, and were required to be adjudged on the merits of the case, irrespective of the attitude of the receivers, and that, if plaintiffs were successful on appeal, the nonaction of the receivers could not stay such proceedings as plaintiffs might lawfully invoke as judgment creditors of the receivership or, as successful litigants against the surety on the appeal bond of defendant.—Armstrong v. Louisiana Ice & Utilities, 145 So. 1, 175 La. 1041.—App & E 322.

La.App. 1 Cir. 1967. All parties to a sale made during ancillary succession proceeding, including succession representatives, are "necessary parties" to a suit to annul the sale.—Middle Tennessee Council, Inc., *Boy Scouts of America v. Ford*, 205 So.2d 867.—Ex & Ad 525.

La.App. 2 Cir. 1938. In proceeding under Employers' Liability Act, two attorneys with whom injured employee entered into contracts, prior to employment of attorney who commenced instant proceeding, were not "necessary parties" and their nonjoinder did not constitute error.—*Heard v. Receivers of Parker Gravel Co.*, 194 So. 142.—Work Comp 1189.

La.App. 3 Cir. 1995. "Necessary parties" are those whose interests in subject are separable and would not be directly affected by judgment if they were not before court, but whose joinder would be necessary for complete adjudication of controversy. LSA-C.C.P. art. 642.—*Ellias v. Ellias*, 651 So.2d 939, 1994-1049 (La.App. 3 Cir. 3/1/95), writ denied 654 So.2d 333, 1995-0832 (La. 5/5/95).—Parties 18, 29.

La.App.Orleans 1940. The true test of the "necessary parties" to an appeal is whether parties have an interest that the judgment appealed from be maintained.—*Succession of Moore*, 193 So. 222.—App & E 327(2).

La.App.Orleans 1940. An appeal from judgment for one of several defendants would not be dismissed for failure to join other defendants as parties to appeal, where defendant favored by judgment was the only proper party to the suit, and the other defendants made no appearance and were totally without interest in suit, since such other defendants were not "necessary parties" to appeal.—*Succession of Moore*, 193 So. 222.—App & E 327(4).

La.App.Orleans 1938. In proceeding by husband of deceased owner of stock in homestead association to compel judicial liquidator to transfer stock to husband's name, collateral heirs of deceased owner were not "necessary parties," since their rights could not be divested by judgment against liquidator which would be based on prima facie correctness of ex parte judgment sending husband into possession of wife's succession; such ex parte judgment not being res judicata as to rights of collateral heirs. LSA-R.S. 6:789.—*In re Liquidation of Reliance Homestead Ass'n*, 181 So. 22.—B & L Assoc 10.

Me. 1934. In materialman's suit for price of material sold to subcontractor and for enforcement of mechanic's lien, principal contractors held not "necessary parties" or "indispensable parties" to suit, and materialman did not lose lien because of failure to join principal contractors. *Rev.St.*1930, c. 105, § 33.—*Andrew v. Bishop*, 172 A. 752, 132 Me. 447, 100 A.L.R. 121.—*Mech Liens* 263(9).

Me. 1934. Parties whose interests will not be affected by decree sought are not ordinarily "necessary parties," although they may be proper parties to avoid multiplicity of suits.—*Medico v. Employ-*

ers' Liability Assur. Corp., 172 A. 1, 132 Me. 422.—*Equity* 94.

Me. 1934. All those against whom relief is prayed are "necessary parties."—*Medico v. Employers' Liability Assur. Corp.*, 172 A. 1, 132 Me. 422.—*Equity* 94.

Md. 1944. Persons who have a possible interest in realty are "proper" though not "necessary parties" to a suit by those claiming adversely to them against those to whom they have contracted to sell the property to determine the validity of vendors' title.—*Taussig v. Van Deusen*, 37 A.2d 915, 183 Md. 436.—*Spec Perf* 106(1).

Md. 1939. In creditors' suit against deceased's executor and a pledgee of deceased's stock and others to compel defendants to account to the estate for stock alleged to have been fraudulently purchased by certain defendants, defendants' wives were properly united as defendants where, with full knowledge of circumstances, they had stock assigned to them either severally or as joint holders with their respective husbands; the wives being "necessary parties" in order that they could be bound by decree and full relief extended.—*Turk v. Grossman*, 6 A.2d 639, 176 Md. 644.—Ex & Ad 438(1).

Md. 1934. In suit by widow to annul antenuptial contract releasing dower rights, executors of deceased husband's estate whose title to leasehold estate and personality of husband would be affected by relief sought were "necessary parties" to suit.—*Wlodarek v. Wlodarek*, 175 A. 455, 167 Md. 556.—Ex & Ad 439.

Md.App. 1984. In action brought by stockholder, who owned 50% of stock in first corporation and who had leased property to first corporation, seeking declaration that lease was void and that % of stock in first corporation owned by second corporation be forfeited, both first corporation, as lessee, and second corporation, as owner of 50% of stock which stockholder sought to have declared forfeited, had interests which would be effected by declaration, and thus, were "necessary parties." *Code, Courts and Judicial Proceedings*, § 3-405(a).—*Bodnar v. Brinsfield*, 483 A.2d 1290, 60 Md.App. 524.—*Decl Judgm* 294, 296.

Mass. 1942. Where wife suing for divorce filed an amended petition to ascertain parties' interests in stock certificates standing in names of husband and wife as joint tenants with right of survivorship and to enforce wife's rights therein, corporations which had issued certificates were not "necessary parties." *G.L.(Ter.Ed.)* c. 208, § 33, as amended by *St.*1936, c. 221, § 1 (M.G.L.A.).—*MacLennan v. MacLennan*, 42 N.E.2d 838, 311 Mass. 709.—*Divorce* 253(1).

Mass. 1942. In suit against assignee of mortgage and grantee of a portion of mortgaged land to recover back money paid by mortgagors to discharge entire mortgage debt which grantee had assumed and agreed to pay, all "necessary parties" were before the court and there was no difficulty in determining and enforcing their respective rights

and obligations, notwithstanding liabilities of assignee of mortgage and of grantee to mortgagors depended upon different rules of law.—*McRae v. Pope*, 42 N.E.2d 261, 311 Mass. 500, 143 A.L.R. 540.—*Mtg* 292(5).

Mass. 1940. Under statute authorizing adjustment of controversy concerning probate of will, only those heirs of testator who are contestants or whose interests under will would be affected by compromise of controversy are “necessary parties” to agreement of compromise. *G.L.(Ter.Ed.) c. 204, § 15 (M.G.L.A.)*.—*McDonagh v. Mulligan*, 30 N.E.2d 385, 307 Mass. 464.—*Wills* 230.

Mich. 1940. As respects rights of residents and taxpayers of township school district land which had been annexed to city, to intervene in suit by city school district against township school district to determine whether annexed land was in city school district, residents were not “necessary parties” to adjudication of legal question of status of annexed land. *Comp.Laws* 1929, § 14019.—*School Dist. of City of Ferndale v. Royal Oak Tp. School Dist. No. 8*, 291 N.W. 199, 293 Mich. 1, 127 A.L.R. 661.—*Schools* 111.

Mich. 1936. If suit by wife’s administrator claiming mental incompetence of wife as ground for cancelling mortgage executed by deceased husband and wife was prosecuted by plaintiff as heir, other heirs held “necessary parties.”—*Dodds v. Purdy*, 269 N.W. 613, 277 Mich. 593.—*Des & Dist* 90(3).

Minn. 1941. “Necessary parties” are those without whom no decree can be effectively made determining the principal issues in the case.—*Flowers v. Germann*, 1 N.W.2d 424, 211 Minn. 412.—*Parties* 18, 29.

Minn. 1941. Where the principal issue in boundary dispute, was whether plaintiffs or defendants were the owners of disputed realty, and a substantial decree could be made as to them, even though the decree might not completely settle all questions which might be involved so as to conclude the rights of all persons who had any interest in the subject-matter of the litigation, there was no defect of parties, and hence plaintiffs’ grantors were not “necessary parties.”—*Flowers v. Germann*, 1 N.W.2d 424, 211 Minn. 412.—*Bound* 30.

Minn. 1941. The rule as to “necessary parties” does not extend to those who are only consequentially interested in the subject-matter of a suit.—*Flowers v. Germann*, 1 N.W.2d 424, 211 Minn. 412.—*Parties* 18, 29.

Minn. 1938. “Necessary parties” are those without whom no decree at all can be effectively made determining principal issues in cause.—*Serr v. Biwabik Concrete Aggregate Co.*, 278 N.W. 355, 202 Minn. 165, 117 A.L.R. 1009.—*Parties* 29.

Minn. 1937. Persons having an interest in the controversy and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it, are commonly termed “necessary parties”; but, if their interests

are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties.—*Hanson v. Bowman*, 271 N.W. 127, 199 Minn. 70.

Minn. 1908. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience, are “necessary parties.”—*Disbrow v. Creamery Package Mfg. Co.*, 115 N.W. 751, 104 Minn. 17.

Minn. 1899. In actions in equity, “proper parties” are those without whom a substantial decree may be made, but not a decree which shall completely settle all the questions which may be involved in the controversy, and conclude the rights of all persons who have any interest in the subject-matter of the litigation; while “necessary parties” are those without whom no decree can be effectively made. In an action by mortgagees to have the liens of their mortgages adjudged to be liens on the money awarded as damages to the mortgaged premises by an easement in the premises acquired by the public subsequent to the execution of the mortgages, the owners of the fee to whom the award would belong, in the absence of any lien in favor of the mortgagees, are proper, if not necessary, parties to the action.—*Lumbermen’s Ins. Co. v. City of St. Paul*, 80 N.W. 357, 77 Minn. 410.

Miss. 1960. Where complainant owned hard-surfaced area in front of line of stores in complainant’s shopping center and tenants occupying stores had no right to use of parking area under their leases except for use of customers of such stores for parking purposes, and beauty shop advertised in newspapers that it had agreement with complainant for free parking facilities in parking area for beauty shop customers, the beauty shop customers and occupants and users of stores abutting parking area were not “necessary parties” to complainant’s action against beauty shop for injunction.—*Morgan Investments, Inc. v. Bagley*, 117 So.2d 792, 238 Miss. 137.—*Inj* 114(3).

Miss. 1952. In action in ejectment by those claiming under an oil, gas, and mineral lease from the United States, which would not consent to join in the action, the United States was not a “necessary parties”, since it was immune from suit and rule as to necessary parties was not applicable.—*Sistrunk v. Graham*, 61 So.2d 335, 215 Miss. 552.

Miss. 1947. The words “interested parties”, as used in statute providing that in will contest all interested parties shall be made parties, means parties who have a pecuniary interest in the subject of the contest, including heirs at law of the testator, who are also “necessary parties”. *Code* 1942, § 506.—*Provenza v. Provenza*, 29 So.2d 669, 201 Miss. 836.—*Wills* 265.1.

Miss. 1943. Trustee and beneficiary in trust deed having filed disclaimer of any interest in own-

er's action for damage to realty were not "necessary parties" to action so that failure to make them parties did not warrant injunction against prosecution of action.—*Robinson v. Turfitt*, 11 So.2d 440, 194 Miss. 140.—Inj 26(3).

Miss. 1941. Proceedings to validate county bonds are solely between the county as a governmental entity and the taxpayers of the county, and those who hold the bonds or other obligations which are to be paid or refunded are not "necessary parties" or even "proper parties". *Laws* 1934, c. 142, § 2; *Code* 1930, § 312 et seq.—*Love v. Humphreys County*, 200 So. 245, 190 Miss. 365.—*Coun- ties* 183(4).

Miss. 1939. In suit for amount allegedly due assignee of an interest in contract, under which assignor and two other parties were to receive one cent for each gallon of a product sold, if they should perform certain conditions precedent, wherein it affirmatively appeared that interest of the assignee and the interests of the two other parties were joint and not joint and several, and wherein bill alleged that all parties had fully performed conditions precedent, the two other parties were "necessary parties," and in their absence validity of the contract would not be determined.—*Burkett v. Hagerty*, 191 So. 411, 186 Miss. 621.—*Assign* 129.

Miss. 1939. Judgment creditors, solely as such, of heirs and devisees or of some of them, are not "necessary parties" to administrator's petition to sell real estate to pay debts. *Code* 1930, § 1694.—*Townsend v. Beavers*, 188 So. 1, 185 Miss. 312, error overruled 189 So. 90.—*Ex & Ad* 335.

Miss. 1938. Where written agreement between lessee and sublessee provided that sublease should become void if original lease between lessee and lessor was canceled and where original lease had been canceled and sublease terminated, sublessees were not "necessary parties" to proceedings to condemn land, notwithstanding sublessees continued in possession of premises, since they had no interest in the premises at time of institution of condemnation proceeding.—*Mississippi State Highway Commission v. West*, 179 So. 279, 181 Miss. 206.—*Em Dom* 177.

Miss. 1936. In suit for cash surrender value of life policy, heirs and estate of deceased brother of insured who had paid premiums on policy and obtained loans thereon without consent of insured held not "necessary parties," where insured sought no relief from heirs and estate.—*Security Mut. Life Ins. Co. v. Brunson*, 170 So. 824, 176 Miss. 893.—*Insurance* 3567.

Miss. 1934. "Necessary parties" include all persons who have such substantial interest that no complete decree can be made without directly affecting their interests or else leaving controversy in such condition that final determination may be inequitable.—*Hooks v. Burns*, 152 So. 469, 168 Miss. 723.—*Equity* 94.

Mo. 1944. Heirs of deceased grantor not "necessary parties" to an action against surviving spouse

and administratrix of deceased's estate to set aside as fraudulent a conveyance from deceased to surviving spouse.—*Herriman v. Creason*, 181 S.W.2d 502, 352 Mo. 1176.

Mo. 1943. On dissolution of corporation by forfeiture of its charter for failure to comply with corporation laws relating to registration, filing annual statements, etc., its officers and directors or managers, as statutory trustees, became "necessary parties" defendant to action against corporation for balance due discharged employee as wages and for his agreed salary until such balance was paid as a continuing penalty and action could no longer be maintained against dissolved corporation alone. *Mo.R.S.A.* §§ 4997 et seq., 5036, 5094.—*Bruun v. Katz Drug Co.*, 173 S.W.2d 906, 351 Mo. 731.—*Corp* 617(5), 619.

Mo. 1942. Where plaintiffs seeking to have tax deeds set aside and to enforce lien of notes secured by trust deed on the land did not show that their assignor and grantor was owner of note at time of sale or had acquired the rights of one who was owner at such time, plaintiffs were not in a position to raise issue that tax sale was invalid for lack of "necessary parties". *V.A.M.S.* § 11129.—*Gee v. Bullock*, 164 S.W.2d 281, 349 Mo. 1154.—*Tax* 798.

Mo. 1941. School district could maintain suit to prevent disbursement outside the district of taxes which should be paid to the district, on theory that statute providing that all pipes and other equipment constituting part of a single distributing system for supplying water to two or more incorporated municipalities belonging to any water company should be treated for taxation purposes as personal property and should be taxable as such were situated was unconstitutional and individual taxpayers in the district were "proper parties" but not "necessary parties" to such suit. *V.A.M.S.* § 137.010.—*School Dist. No. 24 of St. Louis County v. Neaf*, 148 S.W.2d 554, 347 Mo. 700.—*Schools* 115, 118.

Mo. 1941. Where if main and other equipment of water company was taxed as realty, the taxes would go to plaintiff school district, but if such property was taxed as personal the taxes would go to district and municipalities where the property was located, and plaintiff district brought suit to restrain disbursement outside plaintiff district of the taxes on theory of unconstitutionality of statute providing that mains and other equipment should be taxed as personal property, the municipalities and school districts in which were located mains and other property of water company were "necessary parties" to complete determination of issues as was also the water company. *V.A.M.S.* § 137.010.—*School Dist. No. 24 of St. Louis County v. Neaf*, 148 S.W.2d 554, 347 Mo. 700.—*Schools* 118.

Mo. 1939. In action to cancel or set aside a deed, the grantor, if living, is a "necessary party," and, if dead, his heirs or other interested persons are "necessary parties."—*Kidd v. Schmidt*, 136 S.W.2d 72, 345 Mo. 645.—*Can of Inst* 35(1).

Mo. 1939. In suit to set aside trust conveyance, all parties in interest were "necessary par-

ties.”—*Merz v. Tower Grove Bank & Trust Co.*, 130 S.W.2d 611, 344 Mo. 1150.—*Can of Inst* 35(1).

Mo.App. W.D. 1992. “Necessary parties” who must be joined to lawsuit are those persons having interest which would be adversely affected by not being included in suit.—*Anderson v. Wittmeyer*, 834 S.W.2d 780, appeal after remand 895 S.W.2d 595, rehearing denied.—*Parties* 18, 29.

Mo.App. 1977. Where sole issue, in insurer’s declaratory judgment action, was whether driver of automobile, which was insured by family automobile policy and which was involved in accident, was given permission to use such vehicle by its insured owner so as to be afforded coverage under omnibus clause of policy and where insurer did not deny coverage to owners, but, rather, afforded them a defense under terms of policy, owners were neither “necessary parties” nor “indispensable parties” in such action. V.A.M.R. Civil Rules 52.04, 52.04(a), (a)(1, 2), (a)(2)(i, ii), (b), 52.05, 87.04.—*State ex rel. Emcasco Ins. Co. v. Rush*, 546 S.W.2d 188.—*Decl Judgm* 295.

Mo.App. 1943. On corporation’s dissolution, its directors, as statutory trustees, became “proper” and “necessary parties” to pending personal injury actions against it and it was necessary to substitute such trustees for corporation as parties defendant in such actions, which could no longer be maintained in corporation’s name, and judgments rendered against it therein were void. Mo.R.S.A. §§ 5036, 5094.—*State ex rel. McDowell v. Libby*, 175 S.W.2d 171, 238 Mo.App. 36.—*Abate & R* 39.

Mo.App. 1941. Where plaintiff’s death occurred after expiration of term in which final judgment was entered dismissing his cause of action at treble costs against him and before writ of error was sued out, plaintiff’s administrator was proper party to sue out writ of error to review the judgment, and plaintiff’s heirs were not “necessary parties” in proceeding in Court of Appeals. Mo.R.S.A. § 948 (Repealed, Laws 1943, p. 353).—*Madden v. Fitzsimmons*, 150 S.W.2d 761, 235 Mo.App. 1074.—*App & E* 334(4.1).

Mo.App. 1941. Where policy insuring against liability for injuries sustained on premises of insured by one not employed by them, was issued to both husband and wife, both were “necessary parties” to action against insurer, and judgment in favor of both was proper, though wife paid no part of settlement for injuries sustained by third person.—*Daub v. Maryland Cas. Co.*, 148 S.W.2d 58, certiorari quashed State ex rel. Maryland Cas. Co. v. Hughes, 164 S.W.2d 274, 349 Mo. 1142.—*Insurance* 3567, 3582.

Mo.App. 1941. Where two defendants were necessary parties to suit commenced in justice court to enforce a mechanic’s lien, both defendants were “necessary parties” on appeal to circuit court, and notice of appeal should have been served on both, unless there was a waiver by both. V.A.M.S. §§ 512.190 note, 512.270 note.—*Reis-Moran Lumber Co. v. Putney Roofing Co.*, 147 S.W.2d 172.—*J P* 160(4), 160(7).

Mo.App. 1941. A construction company and a contractor to which plaintiff furnished building materials for use in building owned by company in execution of contract between contractor and company were “necessary parties” to suit to enforce a mechanic’s lien for materials, and a judgment against contractor was a prerequisite to a judgment enforcing a lien against the company. V.A.M.S. § 429.190.—*Reis-Moran Lumber Co. v. Putney Roofing Co.*, 147 S.W.2d 172.—*Mech Liens* 249, 263(9).

Mo.App. 1940. Where plaintiff sought to have declared void a restriction created in a deed by defendant to plaintiff affecting a large number of lots then owned by defendant in subdivision, which restriction was of record, restriction was part of scheme to make subdivision a pleasant residential district, and many purchasers of lots in subdivision were influenced to purchase lots at least partially by reason of the restriction, subsequent purchasers were “necessary parties” to the action, regardless whether the restriction was actually specified in their deeds.—*Pappas v. Eighty Hundred Realty Co.*, 138 S.W.2d 762.—*Can of Inst* 35(1).

Mo.App. 1938. Where several parties are jointly interested in an indebtedness, all are “necessary parties” to an action for recovery.—*Nelson v. Massman Const. Co.*, 120 S.W.2d 77, certiorari quashed State ex rel. Massman Const. Co. v. Shain, 130 S.W.2d 491, 344 Mo. 1003.—*Parties* 19.

Mont. 1976. Clerks and recorders of counties within judicial district were not “necessary parties” in original proceeding for declaratory judgment that each of the three district judges within certain district was an “incumbent” within meaning of state constitutional provision and thus had to run on a “retain or reject” ballot in general election; Secretary of State’s presence as a party rendered it unnecessary to join county election officials as parties. Const.1972, art. 7, § 8; R.C.M.1947, §§ 23–3517(3), 23–4501, 23–4510.2.—*Yunker v. Murray*, 554 P.2d 285, 170 Mont. 427.—*Decl Judgm* 302.1.

Neb. 1958. In suit for cancellation or rescission, all persons whose rights, interests, or relations with or through subject matter of suit would be affected by the cancellation or rescission are “proper” and “necessary parties” in order that they may have an opportunity to be heard, and unless they are made parties to suit, court is precluded from rendering a judgment or decree of cancellation.—*Rumbel v. Ress*, 91 N.W.2d 36, 166 Neb. 839, opinion amended on denial of rehearing 92 N.W.2d 904, 167 Neb. 359.—*Can of Inst* 35(1).

Neb. 1943. In mortgage foreclosure action, only the mortgagee, the mortgagor and those who have acquired any interest from either mortgagee or mortgagor subsequent to the mortgage are “necessary parties”.—*Lincoln Joint Stock Land Bank v. Barnes*, 8 N.W.2d 545, 143 Neb. 58, certiorari denied *Niklaus v. Lincoln Joint Stock Land Bank of Lincoln, Nebraska*, 64 S.Ct. 191, 320 U.S. 781, 88 L.Ed. 469, rehearing denied 64 S.Ct. 259, 320 U.S. 814, 88 L.Ed. 492.—*Mtg* 427(1).

Neb. 1942. When a party to an appellate proceeding dies and his interest in the litigation passes to his heirs such heirs are "necessary parties" to the proceeding. Comp.St.1929, §§ 20-1406 to 20-1408.—Keefe v. Grace, 6 N.W.2d 59, 142 Neb. 330.—Abate & R 75(1); App & E 334(5).

Neb. 1942. Since injunction restraining proceedings at law acts on parties to cause, not court in which it is pending, neither judge thereof, nor parties' attorneys, should be made parties defendant to injunction suit, though all parties interested in action at law are "necessary parties".—Massman Const. Co. v. Nebraska Workmen's Compensation Court, 3 N.W.2d 639, 141 Neb. 270.—Inj 114(3).

Neb. 1941. In mortgage foreclosure suit, only mortgagee, mortgagor, and those who acquired any interest from either of them after execution of mortgage are "necessary parties".—Clements v. Doak, 299 N.W. 505, 140 Neb. 265.—Mtg 427(1), 427(2), 427(4).

Neb. 1939. In suit in equity for collection of bonds, foreclosure of mortgage securing the bonds, and enforcement of indemnity agreement executed by stockholders, who were operating the mortgagor-corporation, the stockholders were "proper parties," though not "necessary parties." Comp.St. 1929, § 20-2143.—First Trust Co. of Lincoln v. Airedale Ranch & Cattle Co., 286 N.W. 766, 136 Neb. 521.—Guar 82(0.5).

Neb. 1935. State treasurer could not maintain declaratory judgment action against state depository banks, which refused to pay checks drawn by state treasurer because of doubt existing as to his official status, to determine his rights, status, and other legal relations under his bond, since state and surety on bond were "necessary parties" to proper determination of questions.—Hall v. U.S. Nat. Bank of Omaha, 258 N.W. 403, 128 Neb. 254.—Decl Judgm 294.

Nev. 1888. In all equitable actions, a broad and most important distinction must be made between two classes of parties defendant, namely, those who are necessary and those who are proper. "Necessary parties," when the term is accurately used, are those without whom no decree can be effectively made determining the issues in the cause. "Proper parties" are those without whom a substantial decree may be made, but not a decree which shall completely settle all the questions which may be involved in the controversy, and conclude the rights of all persons who may have any interest in the subject-matter of the litigation.—Rosina v. Trowbridge, 17 P. 751, 20 Nev. 105.

N.H. 1942. Where tenant's insurers, who were nonresidents, became subrogated to tenant's rights against landlord for damages received from sprinkler leakage by reason of having paid tenant for damages sustained, and were the real claimants in tenant's action against landlord, landlord had right to insist that security for costs of the action be furnished, but the security could be ordered without insurers' appearance as "necessary parties". Pub. Laws 1926, c. 330, § 8; c. 341, § 3.—Montello Shoe

Co. v. Suncook Industries, 26 A.2d 676, 92 N.H. 161.—Costs 110(1), 113.

N.J.Err. & App. 1943. Subsequent vendees of realty were "necessary parties" to bill by prior vendees for specific performance of prior contract to convey realty, so as to authorize court, in decreeing specific performance, to provide that prior vendees pay to subsequent vendees balance of purchase price due under the prior contract, and to provide that vendor corporation and owner of corporation pay to subsequent vendees difference between moneys to be paid by original vendees to subsequent vendees and amount paid by subsequent vendees to vendor corporation.—Clusman v. Wall-Murray Corp., 32 A.2d 186, 133 N.J.Eq. 353.—Spec Perf 106(1), 130.

N.J.Err. & App. 1942. In suit by testator's widow and heirs against one of three executors to recover for losses sustained by the estate through such executor's alleged negligence, the coexecutors were "necessary parties".—Spitz v. Dimond, 24 A.2d 188, 131 N.J.Eq. 186.—Ex & Ad 438(4).

N.J.Sup. 1942. In action on a policy insuring against collision damage to automobile, the owners of other automobiles covered by the same master policy had no interest in the litigation and hence were not "necessary parties" to the action.—Parodi v. Universal Ins. Co., 26 A.2d 557, 128 N.J.L. 433.—Insurance 3567.

N.J.Super.Ch. 1956. All persons who may be affected by relief sought or who are interested in the object of a suit are generally deemed "necessary parties".—Garnick v. Serewitch, 121 A.2d 423, 39 N.J.Super. 486.—Parties 18, 29.

N.J.Ch. 1945. Neither Attorney General nor Superintendent of State Police were "necessary parties" to suit seeking to restrain sheriff from taking complainant's fingerprints and photograph in advance of conviction on ground that statute relating to taking of fingerprints and photograph might be declared unconstitutional, and Attorney General, upon being permitted to file a brief as amicus curiae, was in court to fullest extent permissible. N.J.S.A. 53:1-15 et seq., 53:1-19.—Jenkins v. McGovern, 43 A.2d 526, 136 N.J.Eq. 563, reversed Van Riper v. Jenkins, 45 A.2d 844, 140 N.J.Eq. 99, 163 A.L.R. 1343.—Atty Gen 9; Inj 114(3).

N.J.Ch. 1945. Persons interested in object of suit must necessarily be affected by the decree and are therefore "necessary parties" to suit.—Cobb v. Chatham Trust Co., 41 A.2d 137, 136 N.J.Eq. 191.—Parties 18, 29.

N.J.Ch. 1943. In suit by testator's married, but childless, son and daughter, as life beneficiaries of residuary trust under will devising estate, in case of their deaths without surviving spouses or issue, to surviving next of kin of testator and his deceased wife, to charge trustees for improper investment of trust funds, such wife's next of kin, who could not be traced by either life beneficiaries or trustees, were not "necessary parties".—Baird v. Peoples Bank & Trust Co. of Westfield, 33 A.2d 745, 133 N.J.Eq. 561.—Trusts 257.

N.J.Ch. 1942. Individual legatees under will of deceased director of corporation and beneficiaries of trust fund created by will of another such director are neither "necessary parties" nor "proper parties" to suit by trustee in liquidation of corporation, for himself and creditors and stockholders thereof, to hold corporation's officers and directors liable for losses sustained because of failure properly to perform their duties. N.J.S.A. 2:26-10.—Reilly v. Deans, 26 A.2d 183, 131 N.J.Eq. 547.—Corp 625.

N.J.Ch. 1940. Heirs or devisees of one liable on a bond secured by a mortgage are "proper parties" and "necessary parties" to an action to foreclose a mortgage, if a further proceeding for a deficiency arising on the foreclosure is to be instituted against them. N.J.S.A. 2:65-2.—Asher v. Hart, 14 A.2d 781, 128 N.J.Eq. 1.—Mtg 427(3), 435.

N.J.Ch. 1939. "Necessary parties" are those who are indispensable to the suit.—Wemple v. B.F. Goodrich Co., 4 A.2d 510, 125 N.J.Eq. 109, reversed 8 A.2d 326, 126 N.J.Eq. 220.—Parties 18.

N.J.Cir.Ct. 1944. In equity "necessary parties" are those who are indispensable to the suit, whereas "proper parties" are persons having no real interest in the question at issue, but who still have some interest in the subject matter of the suit which may be conveniently settled in such suit, thereby preventing further litigation.—National Radiator Co. v. Chelsea Housing Corp., 37 A.2d 279, 22 N.J.Misc. 193.—Equity 94, 100.

N.J.Cir.Ct. 1942. In suit to enforce mechanics' lien claim, lien claimants other than plaintiff are not "persons whose interest in property would be affected or cut off by judgment and sale" within statute providing for such suit, and hence are not "necessary parties". N.J.S.A. 2:60-135, 2:60-161, 2:60-163, 2:60-164.—Channel Lumber Co. of Belleville v. Trotta, 25 A.2d 19, 20 N.J.Misc. 72.—Mech Liens 263(8).

N.M. 1953. In action by purchaser's administratrix against vendor and vendor's grantees for specific performance of alleged contract to purchase realty, purchaser's heirs were "necessary parties" who should be included in action for purpose of finally determining rights of all parties. 1941 Comp. § 19-710.—Keirsev. Hirsch, 265 P.2d 346, 58 N.M. 18, 43 A.L.R.2d 929.—Spec Perf 106(3).

N.M. 1949. Parties who have an interest in the controversy and who ought to be made parties in order that court may determine the entire controversy and do complete justice by adjusting all the rights involved are commonly termed "necessary parties", but if their interests are severable from those of the parties before the court, so that court can proceed to a decree and do final justice without affecting other persons not before the court, such persons are not "indispensable parties".—Teaver v. Miller, 208 P.2d 156, 53 N.M. 345.—Parties 18, 29.

N.M. 1946. Where contract for sale of realty under which purchasers made deposit in escrow was one under which vendors would have reasonable time for perfection of title, vendors, in addition to

escrow agent, were "necessary parties" to a suit by purchaser to recover deposit.—Lloyd v. Southwest Underwriters, 169 P.2d 238, 50 N.M. 66.—Dep & Escr 26.

N.M.App. 1999. Corporations in which wife had held interests and which owned haircutting franchises were not "necessary parties" as to wife's breach of fiduciary duty claim against husband's parents, where wife claimed she lost her interests in the corporations because of parents' acts in purchasing the franchises under buy-back agreement and managing the financial affairs of the franchises and of husband and wife when husband and wife were facing financial difficulties. NMRA, Rule 1-019.—Moody v. Stribling, 985 P.2d 1210, 127 N.M. 630, 1999-NMCA-094, certiorari denied 981 P.2d 1207, 127 N.M. 389, certiorari denied 981 P.2d 1207, 127 N.M. 389.—Fraud 39.

N.Y. 1937. Under will devising residue to wife and children equally and providing that, if wife should die without having conveyed or devised her share, it should go to children, and, if children should die without having conveyed or devised their shares and without leaving lawful issue, shares should go to wife and surviving children, wife and children received conditional fees, and children, to whom wife devised her property, were "necessary parties" to action to foreclose mortgage on part of residue for purchaser to acquire marketable title. Civil Practice Act, § 1085.—Dunkel v. Homindustries, 9 N.E.2d 949, 275 N.Y. 327.—Mtg 427(3); Wills 602(3).

N.Y. 1937. Under will providing that, if children should die without having conveyed or devised their shares in residue and without leaving lawful issue, shares should go to surviving children, children received present conditional fees and future expectancies in each other's share, and such estates comprised all estates in residue, notwithstanding provision that issue should take place of children dying and leaving lawful issue, since that provision meant death during testator's lifetime, and hence issue were not "necessary parties" to action, to which all children were parties, to foreclose mortgage on part of residue, and purchaser under judgment acquired indefeasible title. Civil Practice Act, § 1085.—Dunkel v. Homindustries, 9 N.E.2d 949, 275 N.Y. 327.—Mtg 427(3); Wills 602(3).

N.Y.A.D. 1 Dept. 1942. New York courts would not take jurisdiction of action involving question whether foreign corporation should declare dividend, such question being a matter of internal management of corporation, notwithstanding that corporate records were kept in New York, and that question had been raised as to ability to acquire jurisdiction of directors in New Jersey, since production of records could easily be compelled by New Jersey courts through their control over corporation, and directors were not "necessary parties" to such action in New Jersey, and directors had agreed to appear in any action brought in New Jersey. Rules of Civil Practice, Rules 106, 107.—Strassburger v. Singer Mfg. Co., 33 N.Y.S.2d 424, 263 A.D. 518, motion granted 46 N.E.2d 358, 289 N.Y. 757.—Corp 665(3).

N.Y.A.D. 1 Dept. 1939. An individual who was a partner at time of dissolution would be a "proper" if not a "necessary party" to an accounting by liquidating partners, since ordinarily all partners are "necessary parties" to an action for a partnership accounting.—Leonard v. Cammann, 13 N.Y.S.2d 244, 257 A.D. 387.—Partners 322.

N.Y.A.D. 2 Dept. 1988. Insurance companies which broker had found to provide professional liability coverage were "necessary parties" in declaratory judgment action brought by broker's client for determination that broker had failed to procure coverage requested; any determination as to scope of policies would perforce affect legal rights and relationships between client and insurers. McKinney's CPLR 1001.—Staten Island Hosp. v. Alliance Brokerage Corp., 524 N.Y.S.2d 766, 137 A.D.2d 674.—Decl. Judgm 295.

N.Y.A.D. 2 Dept. 1984. As alleged third-party transferees of marital property subject to distribution dispute, individuals were properly determined to be "necessary parties" to action. McKinney's CPLR 1003.—Schmidt v. Schmidt, 472 N.Y.S.2d 26, 99 A.D.2d 775.—Divorce 72.

N.Y.A.D. 2 Dept. 1943. Nonresident trustees upon participating in response to notice became "proper" if not "necessary parties", and were entitled to prosecute appeals as "aggrieved parties" from order exercising an election on behalf of incompetent to invade corpus of trust without notice to trustees, since it was within power of court to join trustees as parties so as to elicit all the facts as basis for determination to be made.—In re Norris' Estate., 42 N.Y.S.2d 806, 266 A.D. 882.—App & E 151(3).

N.Y.A.D. 2 Dept. 1938. Senior mortgagees' possession of mortgaged premises pursuant to agreement with mortgagor was an "encumbrance" within the Civil Practice Act, so as to make senior mortgagees "necessary parties" to action to foreclose junior mortgage if junior mortgagee sought judgment to the effect that foreclosure of the lien of his mortgage vested possession paramount to that of senior mortgagees. Civil Practice Act, § 1079, subd. 1, par. 6.—Witschger v. J.K. Marvin & Co., 5 N.Y.S.2d 910, 255 A.D. 70.—Mtg 427(2).

N.Y.A.D. 3 Dept. 1999. Individuals who had held positions as inspectors, judges, and investigators at various thoroughbred and harness racetracks were "necessary parties" to former employee's article 78 proceeding seeking reinstatement to positions. McKinney's CPLR 1001(a), 7801 et seq.—Civil Service Employees Ass'n Inc., Local 1000, AFSCME, AFL-CIO v. Pataki, 687 N.Y.S.2d 740, 259 A.D.2d 826, leave to appeal dismissed in part, denied in part 696 N.Y.S.2d 104, 93 N.Y.2d 993, 718 N.E.2d 409.—States 53.

N.Y.A.D. 3 Dept. 1995. Other candidates named in designating petition for city offices, in addition to those whose candidacy was challenged, were "necessary parties" who had to be joined to proceeding, where plaintiff alleged that designating petition was permeated with fraud, such that entire petition would have to be invalidated if plaintiff's

allegations were sustained.—Fatone v. Board of Elections of County of Rensselaer, 630 N.Y.S.2d 600, 218 A.D.2d 913.—Elections 154(9).

N.Y.A.D. 3 Dept. 1930. Corporation and directors are "necessary parties" to stockholder's representative action based on mismanagement and misconduct of directors.—Jones v. Van Heusen Charles Co., 246 N.Y.S. 204, 230 A.D. 694.—Corp 320(4).

N.Y.A.D. 4 Dept. 1941. All cotenants of tract of real estate were "necessary parties" to nuisance action instituted by one cotenant.—Java Lake Colony v. Institute of Sisters of St. Joseph of Diocese of Buffalo, 28 N.Y.S.2d 33, 262 A.D. 808.—Ten in C 55(3).

N.Y.Sup. 1946. In mortgage foreclosure action, those defendants who must be included in order to cut off all outstanding rights in the property, are "necessary parties" and those against whom a personal judgment is sought are "proper parties".—Mutual Life Ins. Co. of N.Y. v. Ninety-Fifth St. & Lexington Ave. Corp., 60 N.Y.S.2d 450.—Mtg 427(1), 434.

N.Y.Sup. 1942. Under provision of the Election Law requiring proceeding to invalidate designating petition to be instituted within 14 days after last day to file petitions, where board of elections was served on the fourteenth day but papers addressed for service to respondent candidates were not deposited in the mail until the next day, proceeding was dismissed, since respondent candidates were "necessary parties", and proceeding was not instituted as against them until the fifteenth day. Election Law, § 330, subd. 1.—Yearwood v. Cohen, 37 N.Y.S.2d 577.—Lim of Act 131.

N.Y.Sup. 1942. Where trust agreement manifested an intention by settlor to benefit only those of his next of kin who might be living at time of termination of trust, infants who were settlor's next of kin had "contingent remainder" interests in trust and were "necessary parties" upon future accountings of trustee.—Manufacturers Trust Co. v. Fitzpatrick, 36 N.Y.S.2d 7.—Trusts 140(3), 305.

N.Y.Sup. 1941. Where administratrix obtained order directing payment to her of share of proceeds of partition sale to which her decedent would have been entitled, if alive, which funds had been deposited with city treasurer by order of court in partition suit, the persons to whom administratrix distributed such funds were not "necessary parties" to proceeding upon motion to vacate order directing payment and to require restitution.—Langrick v. Rowe, 32 N.Y.S.2d 328, affirmed 41 N.Y.S.2d 82, 265 A.D. 793, appeal denied 41 N.Y.S.2d 949, 266 A.D. 767, motion denied 50 N.E.2d 309, 290 N.Y. 926, affirmed 52 N.E.2d 964, 291 N.Y. 756.—Ex & Ad 85(9); Partit 111(4).

N.Y.Sup. 1941. In action by city for declaratory judgment, particularly with reference to city's right to enter into, with certain union, a closed shop contract, which would affect all city employees of the unified transit system, certain transit employees would not be permitted to intervene where city was

willing and competent to protect interests of all transit employees, including those seeking to intervene, and a determination of the main question involved would entirely dispose of the problems advanced by those seeking to intervene, since those seeking to intervene were neither "interested parties" nor "necessary parties" within contemplation of the Civil Practice Act. Civil Practice Act, § 193, subd. 3; § 209.—*City of New York v. Transport Workers Union of America*, 28 N.Y.S.2d 290.—Decl Judgm 306.

N.Y.Sup. 1938. In action to restrain city from proceeding with construction of municipal electric light and power plant, engineers whom city employed to determine cost of project were not "necessary parties" on ground that complaint alleged that engineers' actions were unauthorized and hence action would lie against them to recover sums paid to them, since such allegation merely stated steps in prosecution of a plan which in its entirety was claimed to be in violation of constitutional debt limit.—*New York State Elec. & Gas Corp. v. City of Plattsburg*, 6 N.Y.S.2d 419, 168 Misc. 597, modified 12 N.Y.S.2d 318, 256 A.D. 732, 257 A.D. 1022, modified 24 N.E.2d 122, 281 N.Y. 450, reargument denied 26 N.E.2d 812, 282 N.Y. 682.—*Electricity* 1.5.

N.Y.Sup. 1937. In action by corporation against director and officer for accounting as respects funds delivered for investment and excess withdrawals for salary, wherein answer alleged that investment was undertaken with co-operation of corporate president and without misconduct and that salary was properly drawn and was commensurate to those paid corporate president and secretary, corporate president and secretary were not "necessary parties."—*Silver Creek Preserving Corp. v. Porter*, 299 N.Y.S. 678, 164 Misc. 818, affirmed 5 N.Y.S.2d 512, 254 A.D. 814.—*Corp* 319(5).

N.Y.Sup.App.Term 1939. In action by assignee of policy to recover death benefits, executors of insured's estate were not "necessary parties" and the assignee was under no duty to bring them in to insure a complete determination of the controversy.—*Zweifach v. Prudential Ins. Co. of America*, 16 N.Y.S.2d 734.—*Insurance* 3567.

N.Y.Sur. 1943. Where there was no person qualified to act as trustee until rendering of decree settling executors' account, which also appointed a substituted trustee, trust beneficiaries were not only "proper parties" but "necessary parties" to proceeding to settle executors' account. Surrogate's Court Act, § 262, subd. 10.—*In re Gibson's Will*, 40 N.Y.S.2d 727.—*Ex & Ad* 471.

N.Y.Sur. 1940. The only "necessary parties" to a proceeding for probate of will were those whose rights would be impaired by a determination of the effectiveness of the will.—*In re Smith's Will*, 24 N.Y.S.2d 704, 175 Misc. 688.—*Wills* 263.

N.Y.Sur. 1940. The contingent remaindermen of residuary trust were not "necessary parties" to accounting of executors, the trustees being the proper parties in that respect.—*In re Leeds' Estate*, 23 N.Y.S.2d 679.—*Ex & Ad* 473(2).

N.Y.Sur. 1938. Impossibility of applying gift directed to be set aside to establish and maintain hospital in particular town with respect to which testator evidenced a general charitable intent would result only in application of cy pres doctrine, and gift once vested would not pass to testator's distributees, and hence distributees were not "necessary parties" in proceeding brought by residuary legatee to determine how fund should be distributed on showing that it was insufficient to build and maintain a modern fair-sized hospital.—*In re Fletcher's Estate*, 2 N.Y.S.2d 771, 166 Misc. 486, affirmed *In re Fletcher's Will*, 7 N.Y.S.2d 1019, 255 A.D. 843, reversed 19 N.E.2d 794, 280 N.Y. 86, motion denied 21 N.E.2d 623, 280 N.Y. 800.—*Char* 37(3).

N.Y.Sur. 1937. Where testamentary trustee, allocated mortgage participation certificate to testamentary trust and acquired title to realty by foreclosure, individual testamentary beneficiaries did not acquire undivided interest in fee of foreclosed property, and, on termination of trust, were not entitled to conveyance which might evidence such undivided interest in fee, and were not "necessary parties" to the foreclosure.—*In re Lockwood's Estate*, 293 N.Y.S. 242, 161 Misc. 877.—*Mtg* 427(2); *Trusts* 284.

N.Y.Sur. 1931. Deceased partner's personal representatives are not "necessary parties" to surviving partner's action to compel accounting by third person in possession of partnership assets.—*In re Prince's Will*, 252 N.Y.S. 908, 141 Misc. 600, reversed 262 N.Y.S. 785, 238 A.D. 843, 238 A.D. 855.—*Ex & Ad* 439.

N.Y.Co.Ct. 1938. Where a mere change of grade of highway is made on the site of a former highway without the taking of any land, landowners are not "necessary parties" to the proceeding of appraisal. Highway Law, § 33.—*In re Bainbridge-Unadilla Part 1, State Highway, Chenango County*, 5 N.Y.S.2d 988, 168 Misc. 407.—*Em Dom* 101(1).

N.Y.Mun.Ct. 1950. In every proceeding of a judicial nature, whether in rem, in equity, or at law, the "necessary parties" are those who have an interest in the subject matter of the proceeding and whose rights may be concluded by the judgment. Civil Practice Act, § 193, subd. 1.—*Stephen Estate, Inc. v. Kaplan*, 100 N.Y.S.2d 455, 198 Misc. 948.—*Parties* 18, 29.

N.Y.Mun.Ct. 1939. In proceeding to try title to truck which had been levied on by city marshal as property of judgment debtor and which was claimed by third party to whom judgment debtor had transferred the truck, the judgment creditor, judgment debtor, third party and city marshal were "necessary parties." Civil Practice Act, § 696.—*Long Island Tinsmith Supply Corp. v. John H. Ramberg & Son*, 15 N.Y.S.2d 159, 172 Misc. 158.—*Execution* 190.

N.Y.City Civ.Ct. 1998. Residents of property that state leased for use as residential facility for persons with developmental disabilities were "necessary parties" to landlord's action against state for possession of that property; thus, landlord's failure to serve notice of petition and petition or in any manner give notice of proceeding to those residents

required dismissal. McKinney's Mental Hygiene Law §§ 13.01, 41.41; McKinney's RPAPL § 701, subd. 1.—*DiScala v. Facilities Development Corp.* for Office of Mental Retardation & Developmental Disabilities Staten Island Developmental Center, 691 N.Y.S.2d 229, 180 Misc.2d 355.—*Land & Ten* 301(2).

N.Y. City Civ. Ct. 1973. "Necessary parties" are those without whose presence court cannot proceed to judgment; "proper parties," if absent, will not prevent the entry of final judgment, but, if present, would make such judgment more complete.—*Teachers College v. Wolterding*, 348 N.Y.S.2d 286, 75 Misc.2d 465, reversed 351 N.Y.S.2d 587, 77 Misc.2d 81.—*Parties* 14, 18.

N.C. 2000. Necessary parties must be joined in an action, whereas proper parties may be joined; for these purposes, "necessary parties" are those who are so vitally interested in the controversy that a valid judgment cannot be rendered in the action completely and finally determining the controversy without their presence, while "proper parties" are those who have an interest in the controversy or subject matter which is separable from the interest of the other parties before the court, so that it may, but will not necessarily, be affected by a decree or judgment which does complete justice between the other parties. Rules Civ. Proc., Rule 19, G.S. § 1A-1.—*Karner v. Roy White Flowers, Inc.*, 527 S.E.2d 40, 351 N.C. 433.—*Parties* 14, 18, 25, 29.

N.C. 2000. Nonparty subdivision lot owners were "necessary parties" to action brought by plaintiff lot owners against defendant lot owners to enjoin violation of residential restrictive covenants, even if nonparty property owners' interests were fully represented by existing parties. Rules Civ. Proc., Rule 19, G.S. § 1A-1.—*Karner v. Roy White Flowers, Inc.*, 527 S.E.2d 40, 351 N.C. 433.—*Inj* 114(1).

N.C. 1961. Owner and driver of automobile were not "necessary parties" to action by guest passenger for injuries sustained in collision with pickup truck owned and operated by defendant, and defendant was not entitled to bring them in as additional defendants for purpose of seeking affirmative relief against them and plaintiff, in absence of sufficient allegations upon which to establish relationship of respondeat superior between plaintiff and owner of automobile in which she was riding or allegation of concurrent negligence invoking statutory provisions for contribution. G.S. §§ 1-73, 1-240.—*Manning v. Hart*, 121 S.E.2d 721, 255 N.C. 368.—*Parties* 51(4).

N.C. 1959. Where complete determination of controversy cannot be made without presence of other parties, those others are "necessary parties" and must be brought in. G.S. § 1-73.—*Overton v. Tarkington*, 106 S.E.2d 717, 249 N.C. 340.—*Parties* 51(1).

N.C. 1956. Where, in action for labor performed in construction of building for defendants and for establishment and enforcement of specific lien therefor on defendants' land, holders of mortgage on such land intervened, intervenors were not

"necessary parties", but were "proper parties", and yet permitting them to intervene was error, in view of facts that defendants had defaulted and, therefore, that any judgment entered would be by default and unaffected by any of intervenors' allegations. G.S. § 1-73.—*Childers v. Powell*, 92 S.E.2d 65, 243 N.C. 711.—*Mech Liens* 264.1.

N.C. 1951. The term "necessary parties" embraces all persons who have or claim in the subject matter of a controversy interests which will be directly affected by an adjudication of the controversy.—*Equitable Life Assur. Soc. of U. S. v. Basnight*, 67 S.E.2d 390, 234 N.C. 347.—*Parties* 18, 29.

N.C. 1951. "Necessary parties" are those persons who have rights which must be ascertained and settled before the rights of the parties to the suit can be determined.—*Equitable Life Assur. Soc. of U. S. v. Basnight*, 67 S.E.2d 390, 234 N.C. 347.—*Parties* 18, 29.

N.C. 1942. Purchasers of land pending action to foreclose trust deed were not "necessary parties" to action, and when admitted as parties they could only prosecute or defend in the shoes of their grantors, and the court would not permit any new question to arise in the cause as a consequence of the purchase.—*Massachusetts Bonding & Insurance Co. v. Knox*, 18 S.E.2d 436, 220 N.C. 725, 138 A.L.R. 1438.—*Mtg* 427(4), 437.

N.C. 1941. Under statute providing that when an infant is seized of an estate in trust by mortgage for another person who may be entitled in law to have a conveyance of such estate, court may decree that infant shall convey such estate in such manner as it may direct, where mortgagors under a deed of trust were not made parties to proceeding instituted by purchaser at foreclosure sale to obtain authority for infant trustee to execute a deed pursuant to such sale, mortgagors were not bound by judgment rendered since they were "necessary parties" to proceeding. Code 1939, §§ 446, 456, 460, 994.—*Riddick v. Davis*, 16 S.E.2d 662, 220 N.C. 120.—*Judgm* 707.

N.C. 1941. In action to require an accounting by administrator cum testamento annexo and sureties on his administration bond, brought after property of decedent which had been devised to his wife for life with remainder in fee simple to his daughter, was divided by daughter's devisees in accordance with daughter's will, the executor of the daughter's will and the devisees thereunder were "proper parties" and "necessary parties" and were properly brought into the action by the trial court. Code 1939, §§ 456, 460.—*Jones v. Griggs*, 14 S.E.2d 836, 219 N.C. 700.—*Ex & Ad* 439.

N.C. 1941. When a complete determination of the matter cannot be had without presence of other parties, they are "necessary parties" and the court must cause them to be brought in. Code 1939, §§ 456, 460.—*Jones v. Griggs*, 14 S.E.2d 836, 219 N.C. 700.—*Parties* 51(4).

N.C. 1940. In action against drainage commissioners to recover on bonds issued by drainage district, counties and all other bondholders were

not "necessary parties" however necessary final adjudication of financial affairs of district might be.—*Dry v. Board of Drainage Com'rs of Cabarrus County, Drainage Dist. No. 6*, 11 S.E.2d 143, 218 N.C. 356.—*Drains* 20.

N.C. 1933. In substituted trustee's action seeking, because of mutual mistake, to reform trust deed by increasing amounts of bearer notes secured thereby, holders of notes held "necessary parties" (C.S. §§ 446, 449, 511, 2976, 2982).—*First Nat. Bank v. Thomas*, 169 S.E. 189, 204 N.C. 599.—*Ref of Inst* 33.

N.C.App. 1989. "Necessary parties" are those who have or claim material interest in subject matter of controversy, and those interests will be directly affected by adjudication of the controversy. *Rules Civ.Proc.*, Rule 19, G.S. § 1A-1.—*Rice v. Randolph*, 384 S.E.2d 295, 96 N.C.App. 112.—*Parties* 18, 29.

N.C.App. 1972. For purposes of rule relating to joinder of parties, "necessary parties" are those persons who have rights which must be ascertained and settled before rights of parties to the suit can be determined. *Rules of Civil Procedure*, rule 19(a, b), G.S. § 1A-1.—*Wall v. Sneed*, 187 S.E.2d 454, 13 N.C.App. 719, appeal after remand 228 S.E.2d 81, 30 N.C.App. 680.—*Parties* 18, 29.

N.D. 1948. In will contest, defendant who was not an heir at law of deceased, would not inherit if will were held invalid and took nothing under will if validity were established, and defendant who was neither an heir at law nor a legatee but was merely named executor and declined to act were not "necessary parties" on appeal from county to district court. *R.C.1943*, 30-2602.—*In re Bratcher's Estate*, 34 N.W.2d 825, 76 N.D. 194.—*Wills* 361.

N.D. 1948. Where county court held will invalid and residuary beneficiary appealed to district court, legatees were "necessary parties" having an interest in subject matter of appeal although not adverse to that of appellant, and failure to make them parties to the appeal was fatal to jurisdiction of the district court. *R.C.1943*, 30-2602.—*In re Bratcher's Estate*, 34 N.W.2d 825, 76 N.D. 194.—*Wills* 361.

N.D. 1943. Testator's children who were parties to probate proceeding, but did not appeal from order admitting will to probate or from decree of final distribution which vested entire estate in their mother, were not "necessary parties" to executor's appeal to the district court from the county court's decree of distribution, which involved only question of executor's fees, and no notice of appeal was required to be served on the children.—*In re Novak's Estate*, 11 N.W.2d 64, 73 N.D. 41.—*Ex & Ad* 314(12).

N.D. 1917. "Necessary parties" are those without whom no decree at all can be effectively made determining the principal issues in the case.—*Sexton v. Sutherland*, 164 N.W. 278, 37 N.D. 500.

Ohio App. 1 Dist. 1991. Beneficiaries of testamentary trust are not "necessary parties" to will-contest action. *R.C. § 2107.73*.—*Fifth Third Bank v. Fifth Third Bank*, 602 N.E.2d 325, 77 Ohio

App.3d 339, dismissed, jurisdictional motion overruled 585 N.E.2d 834, 63 Ohio St.3d 1409.—*Wills* 267.

Ohio App. 1 Dist. 1986. Person who assigned note in order to secure third parties' debt, and third parties themselves, were not "necessary parties" in suit by assignee to compel maker to honor note, where maker had not received proper notification of assignment, had already made payment to assignor, and was not liable to assignee in any event. *Rules Civ.Proc.*, Rule 19; *R.C. § 1309.37(C)*; *U.C.C. § 9-318(3)*.—*Union Inv., Inc. v. Midland-Guardian*, 506 N.E.2d 271, 30 Ohio App.3d 59, 30 O.B.R. 114.—*Bills & N* 459.

Ohio App. 1 Dist. 1958. Where testatrix in her will appointed her son and daughter as executors, her codicil revoked such appointment and appointed another as executor in their stead and expressly reaffirmed the will in all other respects, will and codicil were admitted to probate and executor was named a party defendant to action to contest will and codicil, the son and daughter, as the executors originally named, were not "interested persons" within statute providing that all devisees, legatees and heirs of testator and other interested persons, including executor or administrator, must be made parties to will contest, and consequently son and daughter, as the executors originally named, were not "necessary parties" to action to contest will and codicil. *R.C. §§ 2741.02, 2741.04, 2741.05*.—*Bruckmann v. Shaffer*, 155 N.E.2d 491, 108 Ohio App. 531, 10 O.O.2d 20.—*Wills* 267.

Ohio App. 1 Dist. 1940. Under statute requiring the "owner or owners" to be notified of proceedings by county commissioners to appropriate property for highway purposes, all persons owning any vested title in the realty to be appropriated, including a mortgagee and lessee, are "necessary parties" to the appropriation proceedings, since the word "owner" is not limited to the holder of the ultimate fee-simple title. *Gen.Code, §§ 1201, 1201-1* (repealed 1945). See §§ 1178-37, 1178-38).—*Alldorf v. Campbell*, 29 N.E.2d 435, 65 Ohio App. 149, 18 O.O. 178, 31 Ohio Law Abs. 393.—*Em Dom* 177.

Ohio App. 1 Dist. 1935. Substantial parties to controversy whose rights are affected by judgment are "necessary parties" to error proceedings.—*Shor v. Hutton*, 198 N.E. 192, 50 Ohio App. 349, 4 O.O. 74, 19 Ohio Law Abs. 348.—*App & E* 327(2).

Ohio App. 2 Dist. 1947. In action by county commissioners to quiet title to courthouse property, certain citizens and residents of county, not claiming as taxpayers, but merely as friends of court, who filed an intervening answer, but were not made parties to action, did not possess an "interest" adverse to plaintiffs and were not "necessary parties" within statute relating to joinder of defendants. *Gen.Code, § 11255*.—*Board of Com'rs of Montgomery County v. Cooper's Unknown Heirs*, 75 N.E.2d 84, 50 Ohio Law Abs. 20, appeal dismissed *Board of County Com'rs of Montgomery County v. Unknown Heirs, Devises and Legal*

Representatives of Cooper, 88 N.E.2d 293, 152 Ohio St. 202, 40 O.O. 176.—Am Cur 3.

Ohio App. 2 Dist. 1947. Conservancy district which had lien on mortgaged realty, and treasurer as district's agent for collection of conservancy assessment, were not "necessary parties" in mortgage foreclosure suit, and therefore judgment in foreclosure suit did not extinguish district's lien, though treasurer was served with summons but defaulted. Gen.Code, § 6828-53.—Shaw v. Myers, 71 N.E.2d 528, 48 Ohio Law Abs. 155, certification granted 86 N.E.2d 39, 53 Ohio Law Abs. 511, affirmed 76 N.E.2d 603, 148 Ohio St. 608, 36 O.O. 239.—Drains 84; Levees 22; Mtg 427(4), 587.

Ohio App. 2 Dist. 1945. On probate court's confirmation of sale of realty, purchasers' interest in realty vested and they became "necessary parties" defendant in action wherein sale was made for purpose of opposing codefendant's application to set aside the sale, and hence were "proper parties" to appeal from order denying application and confirming sale. Gen.Code, § 10510-15, subd. 6.—Ozias v. Renner, 64 N.E.2d 325, 78 Ohio App. 166, 33 O.O. 504, 44 Ohio Law Abs. 415.—Ex & Ad 379.

Ohio App. 2 Dist. 1942. Where defendants, in partition action, appealed from an order granting an allowance for plaintiff's counsel fees but refusing to make an allowance to defendants for compensation of their attorneys, plaintiff's attorneys were not "necessary parties" to the appeal. Gen.Code, §§ 3025, 3028, 11255, 11262, 12050, 12223-1 et seq., 12223-5.—Hudson v. Hoster, 46 N.E.2d 422, 37 Ohio Law Abs. 198.—App & E 327(7).

Ohio App. 2 Dist. 1940. Where son instituted action to recover money allegedly due under contract which he and his father had entered into with defendant company, and defendant company filed affidavit of interpleader stating that the son, the father and the father's assignee asserted right to the money, when the court released the defendant company from liability on its payment of money into court, the father and his assignee became "necessary parties" and "proper parties". Gen.Code, § 11265.—Arnold v. Val Decker Packing Co., 42 N.E.2d 698, 36 Ohio Law Abs. 29.—Interpl 19.

Ohio App. 2 Dist. 1939. In tax foreclosure proceeding by the state of an estate held by a life tenant with remainder to the heirs of his body, it was sufficient that life tenant and his children were joined as parties defendant, and it was not necessary that his grandchildren should be joined, since the grandchildren were not "necessary parties". Gen.Code, § 5671 et seq.—Slaughter v. Fitzgerald, 31 N.E.2d 744, 66 Ohio App. 53, 19 O.O. 317, 30 Ohio Law Abs. 599.—Tax 641.

Ohio App. 3 Dist. 1941. Persons injured and representatives of persons killed in collision between bus and truck covered by liability insurance policy acquired rights, on recovery of judgments against insured for damages, to enforce provisions of policy and hence were "necessary parties" to insurer's action against bus company, insured, and truck driver for cancellation of policy, in absence of

legal excuse for failure to make them parties.—Pioneer Mut. Cas. Co. of Ohio v. Pennsylvania Greyhound Lines, 37 N.E.2d 412, 68 Ohio App. 139, 22 O.O. 282, 34 Ohio Law Abs. 383.—Insurance 3006.

Ohio App. 8 Dist. 1939. Holder of land trust certificates could not maintain a class suit on behalf of all certificate holders to have the trust dissolved, since the other holders of certificates were "necessary parties".—Haggerty v. Squire, 26 N.E.2d 603, 63 Ohio App. 300, 17 O.O. 63, reversed 28 N.E.2d 554, 137 Ohio St. 207, 17 O.O. 556.—Trusts 366(2).

Okla. 1940. If mortgaged realty was homestead, the minor children of deceased mortgagor then became "necessary parties" to foreclosure action, as a "condition precedent" to the effective foreclosure of their interests, and the failure to join them resulted in their interests not being foreclosed.—Rives v. Stanford, 106 P.2d 1101, 188 Okla. 108, 1940 OK 447.—Home 212; Mtg 587.

Okla. 1938. In action to quiet title, wherein both plaintiff and defendant contended that their oil and gas mineral leases, each of which provided for a one-eighth royalty were valid, the various parties having an interest in the one-eighth royalty, were not "necessary parties" under the statutes. 12 Okl.St. Ann. §§ 230, 231, 236, 1141.—Marathon Oil Co. v. Western Oil & Drilling Co., 89 P.2d 939, 185 Okla. 53, 1938 OK 572.—Quiet T 30(3).

Okla. 1938. In action for wrongful eviction, parties who owned interest in articles of furniture being used by the plaintiff in premises from which he was evicted were not "necessary parties" plaintiff.—Schuman v. Chatman, 86 P.2d 615, 184 Okla. 224, 1938 OK 605.—Land & Ten 180(3).

Okla. 1938. Where a co-surety, under contract with another surety to share in proceeds of assets or funds acquired from principal, received the proceeds as rightfully due from the principal, both as to any claims that might be made thereto by principal or principal's creditors, the co-surety could not claim, as against the other surety, that the rights of the principal or its creditors were involved, since neither the principal nor its creditors were "necessary parties" to suit brought for accounting between the sureties.—Provine v. Wilson, 80 P.2d 291, 183 Okla. 77, 1938 OK 392.—Princ & S 200(5).

Okla. 1938. A single writ of mandamus was all that was necessary to compel performance of the separate and successive steps in the assessment and collection of taxes by members of the board of county commissioners, the equalization board, and the excise board, the county assessor, county clerk, county treasurer and sheriff, since those county officials, were "proper parties" and "necessary parties" to secure the enforcement and collection of taxes, though each official performed separate and successive duties.—State ex rel. St. Louis-San Francisco Ry. Co. v. Boyett, 80 P.2d 201, 183 Okla. 49, 1938 OK 378.—Mand 151(2).

Okla. 1938. Where will created testamentary trust and authorized trustee to sell any portion of estate and invest proceeds as she might desire, heirs

of testator were not "necessary parties" to suit to foreclose a mechanic's lien and a mortgage on land subsequent to sale thereof by trustee and execution of mortgage thereon by purchaser, and heirs could not enjoin foreclosure sale because they had not been made parties to suit.—*Browne v. Rowsey*, 75 P.2d 432, 181 Okla. 602, 1938 OK 25.—*Mech Liens* 263(5); *Mtg* 427(3), 504.

Okla. 1927. All persons who were parties to the proceeding in the trial court, and whose interest may be prejudicially affected by a modification or reversal of the order or judgment appealed from, are "necessary parties" in the appellate court.—*Houghton v. Sealy*, 264 P. 140, 129 Okla. 168, 1927 OK 431.

Or. 1943. The service of notice of appeal upon appealing defendant's codefendants did not constitute those defendants "adverse" and therefore "necessary parties" to the appeal.—*French v. Christner*, 135 P.2d 464, 173 Or. 158.—*App & E* 327(2).

Or. 1942. In suit in equity to foreclose a chattel mortgage, a junior lienholder is not a "necessary parties" as distinguished from a "proper party".—*Gordan v. United Finance Corp.*, 121 P.2d 938, 168 Or. 149.

Or. 1939. In suit for reformation of a contract, the contracting parties are "necessary parties".—*Easley v. Bottemiller*, 90 P.2d 481, 162 Or. 90.—*Ref of Inst* 33.

Pa. 1938. Prior to the service of process act, terre-tenants were not "necessary parties" to mortgage foreclosure proceedings, notwithstanding that they were permitted to intervene pro inter esse suo. 12 P.S. § 291 et seq.—*Porter v. Levering*, 199 A. 482, 330 Pa. 392.—*Mtg* 427(1).

Pa.Cmwlth. 1984. "Necessary parties" are those whose presence, while not indispensable, is essential if court is to completely resolve controversy before it and render complete relief.—*York-Adams County Constables Ass'n by Sponseller v. Court of Common Pleas of York County*, 474 A.2d 79, 81 Pa. Cmwlth. 566.—*Parties* 18, 29.

R.I. 1971. If there may be a viable judgment having separable affirmative consequences with respect to parties before court, and inquiry is concerned solely with the inequities, in light of total circumstances, resulting from inability to affect absent interested parties, such other parties should be defined as merely "necessary parties" and not "indispensable parties." Rules of Civil Procedure, rule 19.—*Anderson v. Anderson*, 283 A.2d 265, 109 R.I. 204.—*Parties* 18, 29.

R.I. 1941. Where it appeared that grandchildren by deceased daughter of testatrix were not before superior court when bill for construction of will was certified to Supreme Court, and that grandchildren would be entitled to inherit a share of property devised if respondent's contentions were sound, grandchildren were "necessary parties" to proceeding for construction of will, and they were required to be made parties before bill was ready for hearing for final decree and entitled to

certification to Supreme Court in accordance with statute. Gen.Laws 1938, c. 545, § 7.—*Tirocchi v. Tirocchi*, 19 A.2d 7, 66 R.I. 301.—*Wills* 700.

S.C. 1943. Where action for personal injuries sustained by plaintiff as result of alleged negligence of corporation was instituted more than a year prior to dissolution of corporation and cancellation of its certificate of incorporation, the directors and liquidating trustees were not "necessary parties" to the action and were not required to be brought in for a complete determination of the controversy. Code 1942, §§ 409, 7709, 7715.—*Wadsworth v. McRae Drug Co.*, 28 S.E.2d 417, 203 S.C. 543.—*Corp* 630(3.5).

S.C. 1941. Where two tenants in common and their devisees held certain property adversely to third tenant for period of more than 20 years, in suit to compel highest bidder at judicial sale, in partition proceeding instituted by successors in interest of two tenants in common claiming title by adverse possession, to comply with his bid, beneficiaries of an express trust created by the third tenant in disposing of his realty were not "necessary parties," where the trustees were parties. Code 1932, § 399.—*Wells v. Coursey*, 15 S.E.2d 752, 197 S.C. 483.—*Trusts* 257.

S.C. 1939. The probate court was without jurisdiction to direct executors to execute mortgage on land devised by testator for purpose of obtaining money to pay pecuniary legacy which constituted a charge upon the land, but question whether mortgage should be executed was matter for determination of court of common pleas in equity in an action to which minor devisees of the land would be "proper" and "necessary parties".—*Mack v. Stanley*, 2 S.E.2d 792, 190 S.C. 300.—*Wills* 826(3).

S.C. 1938. In an equitable proceeding where an attack is made upon the legality of certain taxes, which it is alleged the commissioners of a quasi public corporation are attempting to levy upon the property of complainants through the county clerk, the commissioners are "necessary parties" essential to the rendition of a final decree.—*De Pass v. City of Spartanburg*, 1 S.E.2d 904, 190 S.C. 22.

S.D. 1956. There are three classes of parties to an action in equity, namely: "formal parties", who may be omitted at the option of the complainants; "necessary parties", who have an interest in the controversy, and should ordinarily be joined unless their interests are separable so that court can, without injustice, proceed in their absence; and "indispensable parties," whose interest is such that a final decree cannot be entered without affecting them, or that termination of controversy in their absence would be inconsistent with equity.—*Weitzel v. Felker*, 76 N.W.2d 225, 76 S.D. 216.—*Parties* 14, 18, 25, 29.

S.D. 1939. The heirs of a mortgagor who dies intestate seized of equity of redemption in mortgaged premises are "necessary parties" to mortgage foreclosure action.—*Federal Land Bank of Omaha v. Fjerestad*, 285 N.W. 298, 66 S.D. 429, 124 A.L.R. 780.—*Mtg* 427(3).

S.D. 1939. The heirs of a mortgagor are not "necessary parties" to a mortgage foreclosure action if mortgagor conveyed his title in mortgaged premises before his death or if land was sold under execution or if after his death his interest in land was sold under an order of county court.—*Federal Land Bank of Omaha v. Fjerestad*, 285 N.W. 298, 66 S.D. 429, 124 A.L.R. 780.—Mtg 427(3).

Tenn. 1946. Municipal authorities who issued franchise to gas company were "necessary parties" to suit under Declaratory Judgment Act by one, as taxpayer and property owner of the municipality, seeking to have charter and franchise of gas company declared to be invalid insofar as corporate documents were construed to empower company to sell natural, as distinguished from manufactured gas, in the municipality. Code 1932, § 8835 et seq.—*Wright v. Nashville Gas & Heating Co.*, 194 S.W.2d 459, 183 Tenn. 594.—Decl Judgm 302.1.

Tex. 1960. "Necessary parties" are those persons who have such an interest in controversy that a final judgment or decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience.—*Royal Petroleum Corp. v. Dennis*, 332 S.W.2d 313, 160 Tex. 392.—Parties 18, 29.

Tex. 1942. Third parties to whom oil and gas lessor conveyed a part of his interest in royalty retained under lease were "necessary parties" to lessor's action against lessee to cancel lease.—*Shell Oil Co. v. Howth*, 159 S.W.2d 483, 138 Tex. 357.—Can of Inst 35(1).

Tex. 1942. "Necessary parties" to a suit are such persons as have or claim a direct interest in the object and subject-matter of the suit, and whose interest will necessarily be affected by any judgment that may be rendered therein, and such persons were not only "proper parties" but are "necessary" and "indispensable parties".—*Veal v. Thomason*, 159 S.W.2d 472, 138 Tex. 341.—Parties 18, 32.

Tex. 1942. Where effect of unitized oil and gas lease covering several contiguous tracts of land separately owned was to vest all lessors of land in the unitized block with ownership of the royalty earned from all the land in such block, the ownership being in proportion which the acreage of the owner bore to the total acreage of the unitized block, in action in trespass to try title to one tract covered by the unitized lease and to obtain judgment freeing the land from the lease, owners of all other tracts covered by the unitized lease were "necessary parties".—*Veal v. Thomason*, 159 S.W.2d 472, 138 Tex. 341.—Mines 79.7.

Tex. 1941. Where certain tracts were not actually surveyed at time partition deed was executed, and subsequent controversy over boundary line between two of tracts was caused by existence of an excess distance on the ground between two of tracts, determination of boundary location by prorating of excess did not require presence of all tract owners as "necessary parties" since judgment would not apportion excess among all blocks, but would merely fix location of boundary line between the

two blocks involved by use of the apportionment rule of construction.—*Great Plains Oil & Gas Co. v. Foundation Oil Co.*, 153 S.W.2d 452, 137 Tex. 324.—Bound 30.

Tex. 1941. Trustees of unincorporated charitable corporation created by will were "necessary parties" to executors' action for construction of the will and for directions as to their duties.—*Miller v. Davis*, 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Wills 700.

Tex. 1940. All persons in whose favor or against whom there might be a recovery, however insignificant, and also all persons who are interested, although indirectly, in the subject matter and relief granted and whose rights might be affected by the decree, are "necessary parties" and should be made parties to the suit to cancel a conveyance.—*Royal Petroleum Corp. v. McCallum*, 135 S.W.2d 958, 134 Tex. 543.—Can of Inst 35(1).

Tex. 1938. In taxpayers' suit for cancellation of bonds and warrants issued by city of Del Rio, the owners and holders of the bonds and warrants were "necessary parties".—*Lowe v. City of Del Rio*, 122 S.W.2d 191, 132 Tex. 111.—Mun Corp 1000(4).

Tex.Com.App. 1941. In an action by the holder of a block of oil leases by various landowners for breach of a contract to drill a test well which, under a contract with the landowners, was to be taken as the fulfillment of the obligation to begin operations under the various leases, the landowners and royalty holders were not "necessary parties," where the leases had long since been forfeited, and the decision of the case could not affect them.—*Riddle v. Lanier*, 145 S.W.2d 1094, 136 Tex. 130.—Mines 109.

Tex.Com.App. 1939. In action to construe a will, all beneficiaries named therein are "necessary parties".—*Winston v. Griffith*, 128 S.W.2d 25, 133 Tex. 348.—Wills 700.

Tex.Com.App. 1938. Deceased's adult children were "necessary parties" to suit by deceased's creditor to cancel deed from debtor to his wife conveying a lot, since children, as owners of interest therein, would be affected by decree of cancellation.—*Strickland v. Wester*, 112 S.W.2d 1047, 131 Tex. 23.—Ex & Ad 423.

Tex.Com.App. 1938. The real and only "necessary parties" to proceeding to settle and approve final account of guardian of deceased ward were the guardian and the ward's legal representative, and all those interested in deceased ward's estate were not "necessary parties." Rev.St.1925, arts. 4299, 4300, 4305 (V.A.T.S. Probate Code, §§ 407, 411).—*Files v. Buie*, 112 S.W.2d 714, 131 Tex. 19.—Guard & W 145.

Tex.Com.App. 1936. Where vendors had executed oil lease covering two tracts, in suit by purchaser of one tract to cancel lease, vendors who owned other tract and were receiving benefit under lease held "necessary parties" precluding trial court from entering judgment in their absence.—*Sharpe v. Landowners Oil Ass'n*, 92 S.W.2d 435, 127 Tex. 147.—Can of Inst 35(1).

Tex.Com.App. 1936. In suit to cancel written instrument, all persons whose rights, interests, or relations with or through subject matter of suit will be affected by cancellation are "necessary parties".—*Sharpe v. Landowners Oil Ass'n*, 92 S.W.2d 435, 127 Tex. 147.—*Can of Inst* 35(1).

Tex.Com.App. 1934. Statute providing that suit lawfully maintainable against any defendant in certain county may be maintained there against all necessary parties uses term "necessary parties" in strict sense as embracing only those without whose presence before court no adjudication of any of subject-matter could be had. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*First Nat. Bank v. Pierce*, 69 S.W.2d 756, 123 Tex. 186.—*Venue* 22(4).

Tex.Com.App. 1933. In owner's suit against warehouseman and buyers from warehouseman for alleged conversion of wheat, where each buyer's transactions were separate, buyers were not "necessary parties," within statutory provision authorizing maintenance of suit, maintainable against one defendant in county where brought, against all "necessary parties". *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*Henderson Grain Co. v. Russ*, 64 S.W.2d 347, 122 Tex. 620.—*Venue* 22(4).

Tex.Com.App. 1926. Parties whose interests are materially affected by judgment are "necessary parties" to direct attack on judgment.—*Dallas County Bois D'Arc Island Levee Dist. v. Glenn*, 288 S.W. 165.—*Judgm* 457.

Tex.App.—Corpus Christi 1983. Where joinder of defendants in particular county was not necessary in order to afford housing authority complete relief to which it was entitled against construction company and its surety, as evidenced by fact that claims were reduced to money judgment against construction company and surety, defendants were not "necessary parties" within meaning of venue statute providing that whenever there are two or more defendants in any suit brought in any county and such suit is lawfully maintainable as to any of such defendants, then such suit may be maintained in such county against any and all necessary parties; furthermore, fact that judgment was on appeal by surety and/or that judgment had not been satisfied did not affect such determination. *Vernon's Ann.Texas Civ.St. arts. 1995, 1995, subd. 29a.*—*Campbell & Son Const. Co., Inc. v. Housing Authority of City of Victoria, Tex.*, 655 S.W.2d 271.—*Venue* 22(6).

Tex.Civ.App.—Fort Worth 1949. Where suit for recovery of lands located in Jack and Wise counties was brought in the former, and two residents of the latter and other defendants of other counties disclaimed interest in Jack county tracts, and no defendants interested in Jack county tracts claimed interest in Wise county tracts, Wise county residents and others interested in Wise county tracts were not "necessary parties" to controversy in Jack county and could have cause transferred insofar as it pertained to them, under exception of the venue statute requiring that action against several defendants remain in county where brought only as against necessary parties. *Vernon's Ann.Civ.St. art.*

1995, subds. 14, 29a.—*Davis v. Blocker*, 224 S.W.2d 509.—*Venue* 22(6).

Tex.Civ.App.—Fort Worth 1940. Where it is made to appear that all parties defendant are jointly and severally liable, they are "necessary parties" and jurisdiction of nonresident defendant is maintainable where another defendant resides. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*American Seed Co. v. Wilson*, 140 S.W.2d 269.—*Parties* 29; *Venue* 22(4).

Tex.Civ.App.—Fort Worth 1940. In suit to recover amounts due on note executed by two of four members of partnership and to foreclose trust deed on undivided half partnership interest in realty, all four partners and their wives and trustee were "proper parties" and "necessary parties," and were properly joined.—*Rips v. Ungerman*, 137 S.W.2d 87, dismissed.—*Mtg* 427(2), 435; *Partners* 200.

Tex.Civ.App.—Fort Worth 1939. In action on fire policy covering real estate and personal property, plaintiffs grown and minor children were "necessary parties" where real estate had been released from a mortgage by payment of money earned by plaintiff and children and property was either the separate estate of plaintiffs' deceased husband or community estate of spouses.—*Franklin Fire Ins. Co. v. Lindley*, 128 S.W.2d 869, reversed 152 S.W.2d 1109, 137 Tex. 196.—*Insurance* 3567.

Tex.Civ.App.—Fort Worth 1938. In suit to recover an interest in an oil lease against defendant which, as assignee of plaintiffs' original lease, relinquished its interest in that lease to lessors and thereafter acquired interest in another lease executed by lessors covering same land to another lessee, the lessors were "necessary parties" for determination of issue of whether defendant took over lease from second lessee for purpose of avoiding any claim of plaintiffs based upon original lease, where lessors had given warranty of title to second lessee.—*Shropshire v. Hammond*, 120 S.W.2d 282.—*Mines* 74(9.1).

Tex.Civ.App.—Fort Worth 1938. In action upon vendor's lien note against person who had assumed its payment under deed to realty, where evidence showed that defendant's conveyance to daughters was not executed and delivered until after suit was instituted, daughters were not "necessary parties" to the suit.—*Beeler v. Harbour*, 116 S.W.2d 927, writ refused.—*Ven & Pur* 279.

Tex.Civ.App.—Fort Worth 1931. Phrase "necessary parties" in statute permitting suit, maintainable against any defendant in one county, to be maintained there against all "necessary parties," means all persons whose presence is necessary to determination of entire controversy. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*Rowan v. Wurzbach*, 44 S.W.2d 1033.—*Venue* 22(3).

Tex.Civ.App.—Austin 1978. In insurance agent's suit against three insurance companies to recover damages for lost commissions and reduced value of his insurance agency arising out of alleged breach of agency contract with defendant companies, two of three companies were "necessary parties" within

meaning of exception to venue statute, and were suable in Bell County where venue was proper as to third company, even though agent could have recovered full amount of insurance commissions owed him from third company without joinder of other two, where agent's pleadings sought joint and several judgment against all three defendants for reduction in value of his agency. *Vernon's Ann.Civ.St. art. 1995, subds. 27, 29a.—National Standard Ins. Co. v. Beard, 569 S.W.2d 52, dismissed.—Venue 22(4).*

Tex.Civ.App.—Austin 1957. State and those with whom it allegedly had made or would make void and illegal contracts were "necessary parties" to taxpayer's suit to enjoin expenditure of public funds under such contracts, and suit must fail in absence of such necessary parties.—*Hill v. Carr, 307 S.W.2d 828.—States 168.5.*

Tex.Civ.App.—Austin 1947. In suit to cancel judgment and remove clouds on oil and gas leases, by holder of undivided interest therein, holders of other undivided interests were not "necessary parties", since foreclosure of plaintiff's undivided interest would not affect owners of other undivided interests.—*Price v. Pelton, 199 S.W.2d 249, ref. n.r.e.—Ten in C 55(3), 55(4).*

Tex.Civ.App.—Austin 1946. Where owners conveyed property to plaintiffs after defendants failed to comply with contract with owners to purchase property, owners were not "necessary parties" to plaintiff's suit against defendants to quiet title and to remove cloud from title, since owners had parted with all their title in the property.—*Stribling v. Polunsky, 195 S.W.2d 554.—Quiet T 30(3).*

Tex.Civ.App.—Austin 1941. On plaintiff's appeal to district court from county court's judgment dismissing a bill of review proceeding to set aside an administratrix' final account for alleged fraud, district court was not deprived of jurisdiction to add new parties which were "necessary parties" such as surety on administratrix' bond and administratrix' children, on ground that effect of adding new parties was to change proceeding from a "collateral" to a "direct attack" upon order approving final account, where pleadings which framed the issues were the same in both courts, and no new issue was injected.—*Mills v. Baird, 147 S.W.2d 312, writ refused.—Ex & Ad 510(12).*

Tex.Civ.App.—Austin 1940. In suit by common school district trustees and taxpayers to enjoin individual members of county board of trustees from enforcing results of an election held to determine whether common school districts should be annexed or grouped with a rural high school district, county board of trustees and rural high school district, as bodies corporate, were "necessary parties", and error consisting in failure to join such parties, which appeared on face of record on appeal, constituted a "fundamental error" requiring reversal of judgment. *Vernon's Ann.Civ.St. arts. 2922a, 2922c.—Blanco County Board of School Trustees v. Mt. View Common School Dist. No. 18, 141 S.W.2d 751.—App & E 672; Schools 111, 118.*

Tex.Civ.App.—Austin 1939. In action against defendant, as administrator of deceased's estate and as guardian of an incompetent's estate, upon note signed by deceased and incompetent and to foreclose trust deed upon incompetent's separate real estate in guardian's possession, deceased's children were neither "necessary parties" nor "proper parties" defendant.—*Johnson v. First Mortg. Loan Co. of San Angelo, 135 S.W.2d 806.—Ex & Ad 438(5).*

Tex.Civ.App.—Austin 1938. The Railroad Commission and the permit holder are "necessary parties" to a proceeding to set aside an order granting a permit to operate as a motor carrier over the public highways. *Vernon's Ann.Civ.St. art. 911b, § 6(d).—Texas & N. O. R. Co. v. Greer, 117 S.W.2d 148, writ dismissed.—Autos 84.*

Tex.Civ.App.—Austin 1937. Where cross-action seeking cancellation of notes held by plaintiff for funds loaned to deceased partner individually and at a time when plaintiff did not know dormant partners alleged that defendant seeking cancellation was surviving partner, exception to allegation that defendant was surviving partner was properly overruled, since surviving partner had right to wind up partnership affairs and dormant partners were not "necessary parties" to proceedings.—*Miller v. White, 112 S.W.2d 487, dismissed.—Partners 258(2).*

Tex.Civ.App.—Austin 1935. In suit on note and to foreclose deed of trust securing note, purchasers of land under foreclosure of second lien notes against land held "necessary parties," authorizing suit on note to be maintained in county where note was payable, notwithstanding defendants resided in another county. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Flynn v. Atlas Life Ins. Co., 81 S.W.2d 772.—Venue 22(6).*

Tex.Civ.App.—Austin 1933. Where plaintiff established right to sue defendants on lien contract in county of suit, codefendants claiming interest in property under instrument executed by defendants subsequent to execution of lien contract held "necessary parties" to suit so as to sustain venue as to them in county of suit. *Vernon's Ann.Civ.St. art. 1995, subds. 5, 29a.—Smith v. Dozier Const. Co., 66 S.W.2d 744.—Venue 22(3).*

Tex.Civ.App.—Austin 1933. "Necessary parties" are parties whose interest in subject-matter of action is such that final decree cannot be entered without affecting their interests.—*Coleman Gas & Oil Co. v. Santa Anna Gas Co., 58 S.W.2d 540, reversed 67 S.W.2d 241.—Parties 18, 29.*

Tex.Civ.App.—Austin 1930. Under *Rev.St.1925, art. 1995, subd. 29a*, added by *Act 1927, 1st Called Sess., c. 72, § 2*, *Vernon's Ann.Civ.St. art. 1995, subd. 29a*, providing that whenever there are two or more defendants in any suit brought in any county in state, and such suit is lawfully maintainable therein under provisions of article 1995, as to any of such defendants such suit may be maintained in such county against any and all necessary parties thereto, the expression "necessary parties" is used in a more general sense as applied to venue and joinder of causes of action as necessary to prevent

multiplicity of actions. Nonresident bus owner could be sued in county of residence of bus driver, where cause of action for injuries from automobile collision was for joint liability for a single cause of action. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Sproles v. Schepps, 26 S.W.2d 922.*

Tex.Civ.App.—Austin 1928. All parties having direct interest in subject-matter of suit are “necessary parties.”—*Southern Surety Co. v. Solomon, 4 S.W.2d 599.—Parties 29.*

Tex.Civ.App.—San Antonio 1954. Where lessees held oil and gas lease from owners of only an undivided one-half interest in oil, gas and other minerals under 34 acres of undeveloped land included in unitized block, royalty owners in unitized block were not “necessary parties” to partition suit by owners of the other one-half mineral interest in 34-acre tract who had not unitized their minerals or executed any oil and gas lease. *Vernon's Ann.Civ. St. art. 6082 et seq.—Douglas v. Butcher, 272 S.W.2d 553, ref. n.r.e.—Partit 46.1.*

Tex.Civ.App.—San Antonio 1941. “Necessary parties” is used in the new exception in the venue statute in the strict sense of the term and embraces only those persons without whose presence before the court no adjudication of any of the subject matter involved in the litigation can be had. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Moore v. Hoover, 150 S.W.2d 96.—Venue 22(4).*

Tex.Civ.App.—San Antonio 1939. A bill of review brought by administrator of deceased insane person to set aside an order of probate court approving expenditures by incompetent's deceased guardian and a subsequent guardian and an order approving final account of the deceased guardian was properly dismissed as to the deceased guardian where neither heirs nor personal representatives of such guardian had been made parties defendant in bill of review; there being a want of “necessary parties.”—*In re Supples' Estate, 131 S.W.2d 13.—Judgm 335(1).*

Tex.Civ.App.—San Antonio 1933. In suit against corporation and nonresident individuals in county where corporation had agency upon obligations contracted by individuals and assumed by corporation, complaint pleading joint cause of action held to show that nonresident individuals were “necessary parties” within venue statute. *Vernon's Ann. Civ.St. art. 1995, subds. 23, 29a.—Brown v. Neyland, 62 S.W.2d 227.—Venue 22(3).*

Tex.Civ.App.—Dallas 1971. Joint tort-feasors are not “necessary parties” within statute providing that whenever there are two or more defendants in any suit brought in any county and such suit is lawfully maintainable therein as to any of such defendants, such suit may be maintained in such county against any and all necessary parties. *Vernon's Ann.Civ.St. art. 1995, subds. 23, 29a.—C. Hayman Const. Co. v. American Indem. Co., 473 S.W.2d 62.—Venue 22(4).*

Tex.Civ.App.—Dallas 1965. Term “necessary parties” means persons who have such an interest in the controversy that a final judgment or decree

cannot be made without either affecting their interests or leaving the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience. *Vernon's Ann.Civ.St. art. 2524–1, § 11.—Steelman v. Rosenfeld, 397 S.W.2d 906, dismissed, and writ granted, reversed 405 S.W.2d 301, on remand 408 S.W.2d 330.—Parties 18, 29.*

Tex.Civ.App.—Dallas 1944. Defendants who claimed right to represent estate under provision of will appointing defendants as attorneys for executrix were only persons interested in maintaining and enforcing such provision, and therefore were “necessary parties” to suit by executrix, who was sole legatee of portion of testator's property in Texas, to annul such provision. *V.A.T.S. Probate Code, §§ 11, 33, 37.—Mason & Mason v. Brown, 182 S.W.2d 729, writ refused w.o.m.—Wills 267.*

Tex.Civ.App.—Dallas 1937. In suit to adjust rights of purchaser of oil runs, company owning oil lease, its grantor under deed whereby grantor was to be entitled to \$25,000 out of one-fourth of seven-eighths of all oil and gas produced, and transferees of grantor's interest in unpaid consideration of \$25,000, and prior purchasers of oil runs, were not “necessary parties,” where prior purchasers had paid to each interested person the full amount due from the prior purchasers for respective interests of interested persons.—*Shell Petroleum Corp. v. Royal Petroleum Corp., 111 S.W.2d 1178, modified 137 S.W.2d 753, 135 Tex. 12.—Mines 74(9.1).*

Tex.Civ.App.—Dallas 1933. “Necessary parties,” as used in *Vernon's Ann.Civ.St. art. 1995, subd. 29a*, mean all persons whose presence is necessary to the determination of the controversy, those who are interested in resisting demands of plaintiff immediately or subsequently and whose rights will be affected thereby.—*Christian v. Universal Credit Co., 63 S.W.2d 229, writ dismissed.*

Tex.Civ.App.—Dallas 1931. In suit to set aside judgment for fraud, all parties interested in maintenance of judgment are “necessary parties.”—*Dallas Coffee & Tea Co. v. Williams, 45 S.W.2d 724, writ dismissed w.o.j.—Judgm 457.*

Tex.Civ.App.—Dallas 1931. “Necessary parties,” within venue statute, means all parties who may be directly or indirectly involved in securing complete relief, or who may be required to enable defendant to present defenses, interplead, or recover over. *Vernon's Ann.Civ.St. art. 1995, § 29a.—Montgomery v. Owen, 37 S.W.2d 1107.—Venue 22(1).*

Tex.Civ.App.—Dallas 1931. In suit for specific performance, brought in county of residence of defendant contracting party, nonresident parties having interest in land were “necessary parties” and could not have case removed on plea of privilege. *Vernon's Ann.Civ.St. art. 1995, § 29a.—Montgomery v. Owen, 37 S.W.2d 1107.—Venue 22(1).*

Tex.Civ.App.—Texarkana 1943. Where sureties on official bond of sheriff were jointly and severally liable with sheriff for unlawful trespass committed by deputy, sureties were “necessary parties” to suit, and venue, as to sureties, could be laid in county of

trespass under provision of venue statute relating to place of venue when suit was brought against two or more defendants. Vernon's Ann.Civ.St. art. 1995, subds. 9, 29a.—Moody v. Kimball, 173 S.W.2d 270.—Venue 22(2).

Tex.Civ.App.—Texarkana 1941. In suit by wife joined pro forma by her husband to enjoin sale of realty under execution issued on judgment obtained by husband's creditors against husband, on ground that realty was wife's separate estate, wherein husband's creditors filed a cross-action for cancellation of conveyances of realty from husband to wife, on ground that conveyances were made to hinder and defraud creditors of husband, heirs of husband, on husband's death during the suit, became entitled to an interest in the husband's estate and were "necessary parties" to the cross-action.—Wells v. Lewis, 159 S.W.2d 244, dismissed.—Fraud Conv 255(2).

Tex.Civ.App.—Texarkana 1941. In condemnation proceeding by county school trustees to acquire two strips of land for playground purposes, where surface estate only was sought to be condemned, and it appeared that mineral estate had been developed for more than 10 years, during which time oil had been and was still being removed therefrom without need of use of the surface strips sought to be condemned, owners and lessees of oil and gas mineral estate were not "necessary parties". Vernon's Ann.Civ.St. art. 1109c, § 1; art. 2905.—County School Trustees of Upshur County v. Free, 154 S.W.2d 935, writ refused w.o.m.—Em Dom 177.

Tex.Civ.App.—Texarkana 1940. In suit to set aside judgment in former suit annulling marriage of deceased and plaintiff on ground that no jurisdiction had been procured over person of plaintiff because purported waiver was executed prior to filing of suit, collateral kin of deceased who would inherit deceased's property if judgment annulling marriage was valid were "necessary parties." Vernon's Ann.Civ.St. art. 2224.—Bragdon v. Wright, 142 S.W.2d 703, writ dismissed.—Judgm 457.

Tex.Civ.App.—Texarkana 1940. Where plaintiffs, who were residents of Dallas county, filed action in district court of Titus county against residents of Hopkins county for death in automobile accident and joined an alleged cause of action against certain defendants, also residents of Hopkins county, to cancel deeds allegedly executed by one defendant to prevent plaintiffs from collecting claim for damages, defendants in action for cancellation of deeds were not "necessary parties" to plaintiffs' action for damages, and hence sustaining such defendants' pleas of privilege to be sued in Hopkins county was proper. Vernon's Ann.Civ.St. art. 1995, subds. 9, 29a; art. 3997.—Mullins v. McDowell, 142 S.W.2d 699.—Venue 22(6).

Tex.Civ.App.—Texarkana 1938. In suit foreclosing vendor's liens upon community property, after the husband's death the minor children of the parties were not "necessary parties" and the entry of the judgment could be against the survivor of the community alone.—Williams v. Tooke, 116 S.W.2d 1114, dismissed.—Judgm 457.

Tex.Civ.App.—Texarkana 1938. In suit to set aside judgment foreclosing vendor's liens, fact that the property in controversy was conveyed to deceased purchaser during his marriage by deed which recited that consideration was paid, and that vendor's lien notes were executed, raised presumption that property was "community," so that minor children of deceased purchaser were not "necessary parties" to the foreclosure suit, and burden rested upon plaintiffs to overcome the presumption with satisfactory proof. Vernon's Ann.Civ.St. art. 4619, V.A.T.S., Probate Code, § 160.—Williams v. Tooke, 116 S.W.2d 1114, dismissed.—Judgm 495(2).

Tex.Civ.App.—Texarkana 1936. In trespass to try title to mineral leasehold wherein no reformation or cancellation of conveyance to defendants was sought, defendants' grantor held not "necessary parties."—Dawson v. Hickman, 95 S.W.2d 1319.

Tex.Civ.App.—Texarkana 1936. In suit to cancel oil lease on 1-acre tract and pooling agreement, whereby oil lease of 20-acre tract, executed by such lessors and one lessor's children who owned half interest in 20-acre tract, was modified so as to include within its terms 1-acre tract and to readjust royalties payable under lease of 20-acre tract, children of lessor held "necessary parties," precluding entry of judgment canceling pooling agreement in their absence.—McCurdy v. Richey, 94 S.W.2d 837.—Can of Inst 35(1).

Tex.Civ.App.—Texarkana 1931. Persons named directors in corporation's charter held not "necessary parties," within venue statute, to suit against corporation on indebtedness incurred over year after incorporation. Vernon's Ann.Civ.St. arts. 1304, subd. 5, 1323, 1995, subd. 29a; art. 7091 (V.A.T.S. Tax-Gen. art. 12.14).—Agua Dulce Supply Co. v. Chapman Milling Co., 37 S.W.2d 768.—Corp 625.

Tex.Civ.App.—Amarillo 1943. Where the effect of unitized oil and gas leases covering separately owned tracts in unitized block was to merge all leases into one contract and vest all lessors in unitized block with right to participate in any royalty from oil, gas or other minerals produced by lessee on any tract included in block, the lessors of all tracts in block were "necessary parties" to action in trespass to try title to certain tracts in the block instituted by one claiming the fee title thereto. Rules of Civil Procedure, rule 784.—Belt v. Texas Co., 175 S.W.2d 622, writ refused.—Mines 50.

Tex.Civ.App.—Amarillo 1943. All persons having or claiming a direct interest in the object and subject matter of suit, and whose interests will necessarily be affected by any judgment that may be rendered therein, are "necessary parties."—Belt v. Texas Co., 175 S.W.2d 622, writ refused.—Parties 18, 29.

Tex.Civ.App.—Amarillo 1943. Generally, all persons who have, or claim, interest in subject matter of suit, which interest necessarily will be affected by any judgment, are not only "proper parties" but are "necessary parties" and "indispensable parties."—Cook v. Spivey, 174 S.W.2d 634.—Parties 14, 25, 29.

Tex.Civ.App.—Amarillo 1941. In action by credit company on contract of seller of automobiles to pay unpaid balances due on buyers' contracts, where petition did not show buyers still had any interest in automobiles which credit company had repossessed, buyers were not "necessary parties" to credit company's action.—Kitchen v. Commercial Credit Co., 158 S.W.2d 595.—Parties 30.

Tex.Civ.App.—Amarillo 1941. A contract obligating decedent to execute and deliver to plaintiff a deed for an undivided interest in oil and mineral rights in land owned by decedent in his own separate right was a contract transferring an "interest in land", and hence devisees to whom decedent devised land were "necessary parties" to suit to cancel contract where decedent's property had not been distributed or sold. Vernon's Ann.Civ.St. art. 1982.—Young v. Poling, 154 S.W.2d 686, writ refused.—Ex & Ad 438(5).

Tex.Civ.App.—Amarillo 1940. "Necessary parties" to a suit are such persons as have or claim a direct interest in the object and subject matter of the suit, and whose interests will necessarily be affected by any judgment that may be rendered therein, and such persons are not only proper parties but necessary and indispensable parties, plaintiff or defendant.—Thomason v. Veal, 144 S.W.2d 361, reversed 159 S.W.2d 472, 138 Tex. 341.—Parties 18, 32.

Tex.Civ.App.—Amarillo 1940. Under oil and gas lease reserving title to one-eighth of the oil in lessors, but providing that lessors in similar leases, in unitized block would participate in the royalty from oil, gas or other minerals "if, when and as produced and sold", lessors held absolute title and dominion until time of sale, and hence other lessors in the unitized block did not acquire any interest in the land and were not "necessary parties" in trespass to try title action wherein the lease was claimed to be invalid.—Thomason v. Veal, 144 S.W.2d 361, reversed 159 S.W.2d 472, 138 Tex. 341.—Tresp to T T 27.

Tex.Civ.App.—Amarillo 1940. In action on fire policy payable to plaintiff, seller of automobile, and finance company, as the interest of each was made to appear if automobile was damaged or destroyed by fire, seller and company were "necessary parties" and, in absence of conclusive proof that their rights had been satisfied, the trial court had no authority to adjudicate the interest or lack of interest of those parties in the policy and the automobile unless they were before the court.—General Exchange Ins. Corp. v. Young, 143 S.W.2d 805.—Insurance 3567; Judgm 16.

Tex.Civ.App.—Amarillo 1940. Subvendees of realty who did not assume payment of any of the indebtedness represented by vendor's lien notes were not primarily liable on the debt represented by the notes, shared no privity of contract with vendor and were not "necessary parties" to a vendor's lien foreclosure suit.—Reed v. Staley, 139 S.W.2d 851.—Ven & Pur 265(1), 279.

Tex.Civ.App.—Amarillo 1939. The administrator and heirs of second mortgagee were not "necessary

parties" to first mortgagee's suit to foreclose first deed of trust, and hence first mortgagee could not bring suit against them under venue statute in county in which land was located where they were residents of another county. Vernon's Ann.Civ.St. art. 1995, subds. 12, 29a.—Pierson v. Pierson, 128 S.W.2d 108, reversed 150 S.W.2d 788, 136 Tex. 310.—Mtg 427(4); Venue 22(7.1).

Tex.Civ.App.—Amarillo 1939. The statute providing that suits lawfully maintainable against any defendant in certain county may be maintained as against all necessary parties uses term "necessary parties" in strict sense as embracing only those without whose presence before court no adjudication of any of the subject matter could be had. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Pierson v. Pierson, 128 S.W.2d 108, reversed 150 S.W.2d 788, 136 Tex. 310.—Venue 22(4).

Tex.Civ.App.—Amarillo 1937. All parties to contract, validity of which is questioned, and as to which specific performance is sought, are "necessary parties" to suit.—Baker v. Arnett, 106 S.W.2d 849, writ dismissed.—Spec Perf 106(1).

Tex.Civ.App.—Amarillo 1935. Children of insured named as beneficiaries of one-fifth interest each in proceeds of life policy held not "necessary parties" to action by husband named as beneficiary of two-fifths of proceeds to recover such interest where children were nonresidents of state.—Atlas Life Ins. Co. v. Standfieri, 86 S.W.2d 852, writ dismissed.—Insurance 3567.

Tex.Civ.App.—Amarillo 1935. "Necessary parties" to action are only those persons without whose presence before the court no adjudication of any of the subject-matter involved in litigation can be had.—Atlas Life Ins. Co. v. Standfieri, 86 S.W.2d 852, writ dismissed.—Parties 29.

Tex.Civ.App.—Amarillo 1932. Alleged converters of mortgaged automobile held not "necessary parties" authorizing maintenance of suit to foreclose mortgage in county where secured notes were payable, where alleged converters resided elsewhere. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Matthews v. Hedley Motor Co., 47 S.W.2d 661.—Venue 22(3).

Tex.Civ.App.—Amarillo 1932. Tenant holding crops as mere stakeholder and bank with lien on rents held not "necessary parties" to suit for deficiency after foreclosure of trust deed so as to authorize maintenance of suit in county where notes secured by trust deed were payable. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Ellwood v. Pollard, 46 S.W.2d 731.—Venue 22(3).

Tex.Civ.App.—El Paso 1942. Generally, all persons who have, or claim, interest in subject matter of suit, which interest necessarily will be affected by any judgment, are not only "proper parties" but are "necessary parties" and "indispensable parties".—Permian Oil Co. v. Western Oil & Royalty Co., 164 S.W.2d 21.—Parties 18.

Tex.Civ.App.—El Paso 1942. All persons who have or claim a direct interest in the object and subject matter of a suit, and whose interest will

necessarily be affected by any judgment that may be rendered therein, are not only "proper parties," but are "necessary parties" or "indispensable parties," plaintiff or defendant.—*Permian Oil Co. v. Western Oil & Royalty Co.*, 164 S.W.2d 21.—Parties 29.

Tex.Civ.App.—El Paso 1941. In action against city by judgment creditor thereof to restrain transfer of funds for other purposes than payment of city's current running expenses until payment of judgment, where many bills for other debts incurred by city were left to be applied on city taxes, no showing was made as to purpose for which such debts were incurred, they were not shown to constitute part of city's current governmental expense, and there was no showing that any of such other creditors would be prejudiced by judgment for plaintiff, they were not "necessary parties" without whose presence no judgment could be rendered.—*City of McAllen v. Exchange Nat. Bank of Tulsa, Okl.*, 154 S.W.2d 971, writ refused w.o.m.—*Inj* 114(3).

Tex.Civ.App.—El Paso 1941. In petroleum geologist's suit against oil company on oral contract for delivery to plaintiff of specified portion of defendant's share of oil produced and marketed from certain lease, in which it had working interest until plaintiff received stated sum per acre as compensation for his services, lessee and another oil company, each of which contributed additional tracts, to which contract provided that plaintiff's interest should extend, were not "necessary parties," in absence of assertion of any claim by plaintiff to anything belonging to such companies though he took his interest subject to every right of theirs of which he had notice.—*Texas Conservative Oil Co. v. Jolly*, 149 S.W.2d 265.—Parties 30.

Tex.Civ.App.—El Paso 1940. Where husband and wife entered into a contract for mutual wills leaving to each other a life estate in community property, with remainder to certain of their children in designated shares, and granting a legacy payable out of money and personal property to children who were not devised realty, and, after husband's death, his will was duly probated but no will was probated after death of wife, and thereafter two of children filed their cross-action to establish their right to shares in realty, wife's legal representatives were "necessary parties" to cross-action, in absence of showing that there was no administration on wife's estate and no necessity therefor. *Vernon's Ann.Civ.St. art. 1982.—French v. French*, 148 S.W.2d 930, writ dismissed, correct.—*Ex & Ad* 439.

Tex.Civ.App.—El Paso 1940. All persons diverting waters in stream and acting in concert are not "necessary parties" defendant to riparian owners' suit to abate wrongful diversion of waters of stream, but may be joined in an equitable proceeding as joint wrongdoers, since each is liable, but the rule is different when the wrongdoers act independently of each other, since liability in such case is several and not joint.—*Zavala County Water Imp. Dist. No. 3 v. Rogers*, 145 S.W.2d 919.—*Waters* 63.

Tex.Civ.App.—El Paso 1940. In riparian owners' equitable action to abate wrongful diversion of

waters of stream, all persons acting in concert in diverting the waters were not "necessary parties," but could be joined to abate the wrongdoing.—*Zavala County Water Imp. Dist. No. 3 v. Rogers*, 145 S.W.2d 919.—*Waters* 63.

Tex.Civ.App.—El Paso 1937. In suit against surety on bond given to secure deposits of road district with bank for interest from date bank closed to date of foreclosure of government bonds pledged to indemnify surety on theory that such pledge inured to benefit of district, insolvent bank and its receiver were not "necessary parties."—*Lloyds America v. El Paso-Hudspeth Counties Road Dist. of Texas*, 107 S.W.2d 1008, writ refused.—*Princ & S* 147(9).

Tex.Civ.App.—El Paso 1935. In boundary suit brought by two oil and gas lessees against defendant claiming oil and gas under certain other land, fee owners of certain portions of such land involved held not "necessary parties," since they would not be affected adversely by any judgment which might be rendered.—*Lamb v. Bonds & Dillard Drilling Corp.*, 107 S.W.2d 500.—*Bound* 30.

Tex.Civ.App.—El Paso 1930. Persons interested in object and subject-matter of suit, whose rights will be directly affected by judgment, are "necessary parties."—*York v. Alley*, 25 S.W.2d 193, writ refused.—Parties 29.

Tex.Civ.App.—El Paso 1912. "Necessary parties" to a suit are parties who are so vitally interested in the subject-matter that a valid decree could not be rendered without their presence, whether there was an objection to a failure to make them parties or not; but where they are only "proper parties," the right to complain that they were not made parties may be waived by delay.—*Biggs v. Miller*, 147 S.W. 632.

Tex.Civ.App.—Beaumont 1976. Joint tort-feasors who are jointly and severally liable for same act are not always "necessary parties" for purposes of establishing venue in county on basis that venue exists against one of several defendants. *Vernon's Ann. Civ.St. art. 1995, subd. 29a.—Amoco Production Co. v. Mayer*, 540 S.W.2d 353, dismissed.—*Venue* 22(4).

Tex.Civ.App.—Beaumont 1942. In trespass to try title to realty, on ground that deed executed by plaintiff and her mother of realty which was part of estate of plaintiff's deceased father was void as to plaintiff because she was a married woman and did not appear before notary public to have the deed acknowledged, "necessary parties" were not in the case to support equitable partition, where the mother was not a party nor were her grantees of the estate.—*Keller v. Downey*, 161 S.W.2d 803, affirmed *Humble Oil & Refining Co. v. Downey*, 183 S.W.2d 426, 143 Tex. 171.—*Partit* 46.1.

Tex.Civ.App.—Beaumont 1942. Deceased's independent executors were the only "necessary parties" to suit to set aside an order probating deceased's will, and executors' appeal from judgment for plaintiff brought record on all issues arising on trial before the Court of Civil Appeals for review, and hence plaintiff's motion that judgment be af-

firmed as to defendant beneficiaries who appealed but did not file an appeal bond would be overruled.—*Treme v. Thomas*, 161 S.W.2d 124, writ refused w.o.m.—*Wills* 366.

Tex.Civ.App.—Beaumont 1941. The owners of oil lease, when managing operator thereof applied to Railroad Commission for and was granted permit to drill oil well on leased tract as an exception to spacing rule 37, were not “necessary parties” to suit by holder of lease on adjoining tract to cancel permit but such operator and commission were only necessary parties, though plaintiff also prayed for injunction against drilling of well and production of oil therefrom. *Vernon’s Ann.Civ.St. art. 6049c, § 8.—Reynolds v. Ward Oil Corp.*, 157 S.W.2d 457, writ refused w.o.m.—*Mines* 92.35.

Tex.Civ.App.—Beaumont 1941. Testator’s brothers and sisters were not “necessary parties” to a proceeding by testator’s daughter and her husband to annul and suspend testator’s will as admitted to probate. *V.A.T.S. Probate Code, §§ 11, 15, 33.—Hunt v. Carroll*, 157 S.W.2d 429, writ dismissed 168 S.W.2d 238, 140 Tex. 424.—*Wills* 267.

Tex.Civ.App.—Beaumont 1941. Where claim for workmen’s compensation was filed by mother for herself, two adult children, and a minor child, whereas suit to set aside award denying compensation was filed by mother alone, joined by her husband, but it appeared that the adult children had waived any claim which they might have, and had assigned such claim to their mother, and hearing on petition by minor to intervene revealed that minor was not a dependent of the deceased employee, suit was not subject to dismissal for nonjoinder of “necessary parties”. *Vernon’s Ann.Civ.St. art. 8306, § 16.—Traders & General Ins. Co. v. Davis*, 147 S.W.2d 908, writ dismissed 149 S.W.2d 88, 136 Tex. 187.—*Work Comp* 1867.

Tex.Civ.App.—Beaumont 1940. In suit by executrix of deceased husband’s estate, who claimed under right to possession of stock transferred by deceased to trustees by trust deed which provided that children of deceased should receive stock on trust’s termination wherein trustees sought to interplead all children of deceased, deceased’s children were “necessary parties” to the action and trial court could not enter judgment in favor of executrix without having children joined as parties to the action.—*Chaison v. Chaison*, 136 S.W.2d 239, writ refused.—*Interpl* 19.

Tex.Civ.App.—Beaumont 1939. Third parties to whom oil and gas lessor conveyed a fractional interest in his royalty under lease were “necessary parties” to lessor’s action against lessee to cancel lease.—*Shell Petroleum Corp. v. Howth*, 133 S.W.2d 253, modified *Shell Oil Co. v. Howth*, 159 S.W.2d 483, 138 Tex. 357.—*Can of Inst* 35(1).

Tex.Civ.App.—Beaumont 1938. In certiorari proceedings to cancel an order of county court directing an administratrix to convey certain realty, and to cancel a deed executed pursuant thereto, the sureties on the bond of the administratrix were not “necessary parties.”—*McDonald v. Edwards*, 115

S.W.2d 762, affirmed 153 S.W.2d 567, 137 Tex. 423.—*Ex & Ad* 269.

Tex.Civ.App.—Beaumont 1936. Surety to whose deposit bank had charged note held not entitled to maintain action against bank for conversion in county not domicile of bank by joining other sureties on note who lived in county where action was brought, since sureties were neither “proper parties” nor “necessary parties” to such action. *Rev. St.1925, § 1995, subd. 4.—Jasper State Bank v. Townsend*, 98 S.W.2d 224.—*Venue* 22(2).

Tex.Civ.App.—Beaumont 1936. City manager and clerk acted in their personal and not in their official capacities when they refused to execute and deliver draft as directed by valid resolution of city commission approving settlement of employee’s claim for damages, and hence were “necessary parties” in their personal capacities to mandamus suit to compel execution and delivery of such draft.—*City of Beaumont v. Stephenson*, 95 S.W.2d 1360, writ dismissed.—*Mand* 151(2).

Tex.Civ.App.—Beaumont 1936. In suit to recover taxes due on land, minor heirs having interest in land held not “necessary parties.”—*Baldwin v. State*, 95 S.W.2d 1354, writ dismissed.—*Tax* 641.

Tex.Civ.App.—Beaumont 1936. Dismissal of minor heirs having interest in land as parties to suit to recover taxes due on such land held not to preclude judgment and foreclosure of tax lien against joint owner properly before court, since minor heirs, although “proper parties,” were not “necessary parties”. *Vernon’s Ann.Civ.St. art. 7328.—Baldwin v. Hull-Daisetta Independent School Dist.*, 95 S.W.2d 1350, writ dismissed.—*Tax* 647.

Tex.Civ.App.—Beaumont 1935. Where boundary suit to determine correct location on ground of certain sections involved determination of location of boundary lines of several surveys, all persons claiming land on such surveys held “necessary parties” or “proper parties,” subject to be made parties to litigation at discretion of trial court.—*McDonald v. Humble Oil & Refining Co.*, 78 S.W.2d 1068, writ dismissed.

Tex.Civ.App.—Beaumont 1934. Where court had jurisdiction over subject-matter of suit against bank, and president of bank was served with citation, stockholders of bank were not “necessary parties” or “proper parties” to suit.—*Cruse v. Mann*, 74 S.W.2d 545, writ dismissed.—*Banks* 221.

Tex.Civ.App.—Beaumont 1934. Where court had jurisdiction over subject-matter of suit against bank, and president of bank was served with citation, stockholders of bank were not “necessary parties” or “proper parties” to suit, and hence notice of suit and service on them was not required for rendition of valid judgment against bank and stockholders.—*Cruse v. Mann*, 74 S.W.2d 545, writ dismissed.—*Judgm* 17(1).

Tex.Civ.App.—Waco 1964. “Necessary parties” were those who had or claimed direct interest in object and subject matter of suit and whose interest would be necessarily affected by judgment there-

in.—*Reva Corp. v. Golden Light Coffee & Equipment Co.*, 379 S.W.2d 133.—Parties 18, 29.

Tex.Civ.App.—Waco 1949. “Necessary parties” to a suit are those indispensable to an adjudication of the controversy in dispute and without whom the court will not proceed to any judgment or decree, even as between adverse parties properly before the court.—*Simmons v. Wilson*, 216 S.W.2d 847.—Parties 18, 29.

Tex.Civ.App.—Waco 1949. “Necessary parties” to a suit are all persons who have an interest of such nature in the controversy that a final decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.—*Simmons v. Wilson*, 216 S.W.2d 847.—Parties 18, 29.

Tex.Civ.App.—Waco 1949. Where rights asserted by those claiming overriding royalty interests in mineral leasehold estate, and rights asserted by corporation and its president in consolidated suit by them grew out of same series of related events, but the several claims therein declared on, did not constitute a single or indivisible cause of action against defendant, and claims of corporation and president and claims of those claiming royalty interests were severable, corporation and president were not “necessary parties” to causes of action asserted by those claiming royalty interests, and trial court did not abuse discretion in severing action asserted by corporation and its president. Rules of Civil Procedure, rules 41, 174(b).—*Simmons v. Wilson*, 216 S.W.2d 847.—Action 60.

Tex.Civ.App.—Waco 1946. Owners and holders of city bonds are “necessary parties” in taxpayer’s suit to cancel bonds.—*Hayward v. City of Corpus Christi*, 195 S.W.2d 995, ref. n.r.e.—*Mun Corp* 1000(4).

Tex.Civ.App.—Waco 1941. Where deed recited that lien securing one purchase-money note should be superior to liens securing two other purchase-money notes, and vendor, on selling first note and lien, expressly subordinated liens securing remaining notes to lien securing first note, vendor’s heirs were not “necessary parties” to suit on first note, and judgment on note and for foreclosure of vendor’s lien was not “res judicata” as to heirs.—*Jordan v. Brown*, 149 S.W.2d 1045, writ refused.—*Judgm* 707.

Tex.Civ.App.—Waco 1940. Where the only questions involved in construction of will and codicil related to manner of payment of annuities provided for legatees, and will and codicil made the annuities a charge on the estate prior to bequests of \$1 and \$2,500 to son and grandson and prior to rights of public charity in the residue, and no contention was made that executors abused their discretion as to son and grandson and Attorney General as legal representative of public charities, son and grandson and Attorney General were not “necessary parties” to suit by executors for judicial construction of the obligations of executors to the annuitants.—*Miller v. Davis*, 146 S.W.2d 1006, reversed 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—*Ex & Ad* 82.

Tex.Civ.App.—Waco 1940. Legatees whose rights are in no event prejudiced by provisions of decree construing will are not “necessary parties” to suit for construction of will.—*Miller v. Davis*, 146 S.W.2d 1006, reversed 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—*Wills* 700.

Tex.Civ.App.—Waco 1939. In equity, all persons in whose favor or against whom there might be a recovery, however partial, and all persons who are so interested that their rights or duties might be affected by the decree are “necessary parties” and must be made parties in order that their rights may be adjudicated and finally determined and all parties bound by a single decree.—*Bays v. Wright*, 132 S.W.2d 144.—*Equity* 94.

Tex.Civ.App.—Waco 1938. Where plaintiff alleged a joint cause of action against a corporate defendant and other nonresident defendants in suit for services rendered in county where suit was filed and proved a cause of action against corporation, plaintiff could maintain suit in that county as against corporation, and all other parties against whom plaintiff had a joint cause of action were “necessary parties” within statute permitting plaintiff to join all other necessary parties in suit and to retain venue in that county as against them. *Vernon’s Ann.Civ.St. art. 1995*, subds. 23, 29a.—*Monte Oil Co. v. McFall*, 114 S.W.2d 596.—*Venue* 22(8).

Tex.Civ.App.—Waco 1937. In direct attack on judgment, all parties whose interests are directly and materially affected by judgment are “necessary parties.”—*Reed v. Harlan*, 103 S.W.2d 236, writ refused.—*Judgm* 457.

Tex.Civ.App.—Eastland 1960. “Necessary parties” to suit are those who have claim or direct interest in object and subject matter of suit and whose interest will necessarily be affected by any judgment rendered therein.—*Perkins v. Abilene State School*, 345 S.W.2d 574.—Parties 18, 29.

Tex.Civ.App.—Eastland 1943. Statute providing that a suit which is lawfully maintainable in a particular county as to any one of several defendants, may be maintained in such county against all “necessary parties” thereto, uses quoted words in contradistinction to “proper party” as meaning only those parties without whose presence before the court no adjudication of any of the subject matter involved in litigation can be made. *Vernon’s Ann. Civ.St. art. 1995*, subd. 29a.—*Miller v. Matthews*, 176 S.W.2d 1011.—*Venue* 22(4).

Tex.Civ.App.—Eastland 1943. Nonresident executrices of estate of deceased purchaser of mortgaged land at foreclosure sale were not “necessary parties” to suit on note given by mortgagors so as to sustain venue in county where note was made payable, under exception 29a, of the venue statute though plaintiffs sought in same suit to have foreclosure sale set aside as being in fraud of creditors. *Vernon’s Ann.Civ.St. art. 1995*, subd. 29a.—*Miller v. Matthews*, 176 S.W.2d 1011.—*Venue* 22(6).

Tex.Civ.App.—Eastland 1942. An action by creditor against a nonresident debtor to recover amount of indebtedness payable in Stephens county and

against subsequent purchasers, who resided in other counties, of personalty incumbered with creditor's liens to secure the debt, was properly maintainable in Stephens county under exception 29a of the venue statute, on the ground that the subsequent purchasers were "necessary parties" to the suit. *Vernon's Ann.Civ.St. art. 1995, subds. 5, 29a.—Ulmer v. Dunigan Tool & Supply Co., 163 S.W.2d 901.—Venue 22(6).*

Tex.Civ.App.—Eastland 1942. "Necessary parties", within exception to venue statute permitting any suit maintainable in a particular county as to any of several defendants to be maintained in that county against any and all necessary parties thereto, are those persons without whose presence before the court an adjudication of any of the subject matter involved in the litigation cannot be had. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Reed v. Walker, 158 S.W.2d 894.—Venue 22(4).*

Tex.Civ.App.—Eastland 1941. Under statute providing that, when there are two or more defendants in any suit brought in any county and the suit is lawfully maintainable therein as to any of such defendants, the suit may be maintained in that county against all "necessary parties" thereto, the quoted term is used in a strict sense and embraces only those persons without whose presence before the court no adjudication of any of the subject matter involved in the litigation can be had. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Crawford v. Sanger, 160 S.W.2d 115.—Venue 22(4).*

Tex.Civ.App.—Eastland 1937. Purchasers of land at guardianship sales would be "necessary parties" to statutory bill of review to nullify orders of probate court appointing a guardian authorizing the sale of land or approving a report of such sale. *V.A.T.S., Probate Code, § 31.—Johnson v. Ortiz Oil Co., 104 S.W.2d 543.—Judgm 335(1).*

Tex.Civ.App.—Eastland 1936. Statute, *Vernon's Ann.Civ.St. art. 1995, subd. 29a*, providing that suit lawfully maintainable against any defendants in certain county may be maintained there against all necessary parties used term "necessary parties" in strict sense as embracing only those without whose presence before court no adjudication of any of subject matter could be had.—*L. E. Whitham Const. Co. v. Wilkins, 90 S.W.2d 916.*

Tex.Civ.App.—Eastland 1935. Grantees of purchasers, who bought lots from railway subject to a map or plat which reserved strip of land through town for railway purposes, did not have such interest in strip as would make them "necessary parties" to proceedings by town to condemn part of strip for underpass, since grantees' servitude would merely be damaged and not taken. *Vernon's Ann.Civ.St. art. 3264.—Shelton v. City of Abilene, 80 S.W.2d 351.—Em Dom 177.*

Tex.Civ.App.—Eastland 1935. Persons who have servitude in land, but who would not be "necessary parties" to condemnation proceedings brought to subject land to public use, could not enjoin appropriation of land to public use by agreement of town and owner of land. *Vernon's Ann.Civ.St. art.*

3264.—Shelton v. City of Abilene, 80 S.W.2d 351.—Em Dom 274(1).

Tex.Civ.App.—Eastland 1930. Term "necessary parties" in statute permitting suit, maintainable against any defendant in one county, to be maintained there against all necessary parties refers to necessary as distinguished from proper parties. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Oakland Motor Car Co. v. Jones, 29 S.W.2d 861, mandamus denied Jones v. Hickman, 48 S.W.2d 982, 121 Tex. 405.—Venue 22(3).*

Tex.Civ.App.—Eastland 1930. All parties whose interest will be affected by decree are "necessary parties."—*Parker v. Casey, 29 S.W.2d 426.—Parties 21.*

Tex.Civ.App.—Tyler 1973. Where original petition set up cause of action against resident of forum county on promissory notes and security agreements executed by such resident and also set up separate cause of action against nonresident owners of auction for their alleged conversion of livestock which was described in the security agreements and which was not in such nonresidents' possession other than as subject of consignment by the resident defendant, such nonresidents were not "necessary parties" within meaning of venue statute section relating to suit against all necessary parties whenever there are two or more defendants in a suit which is lawfully maintainable in forum county as to any of such defendants. *Vernon's Ann.Civ.St. art. 1995, subds. 5, 29a.—Mims v. East Texas Production Credit Ass'n, 496 S.W.2d 682, dismissed.—Venue 22(6).*

Tex.Civ.App.—Corpus Christi 1973. Where plaintiff, if he recovers, is entitled to joint judgment against two or more defendants and suit is maintainable in county where brought as to one of defendants under subdivision of venue statute, the other defendants are "necessary parties" within venue statute. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Vahlsing, Inc. v. Esco, Ltd., 496 S.W.2d 652, dismissed.—Venue 22(4).*

Tex.Civ.App.—Galveston 1948. "Necessary parties", within exception 29a of venue statute, providing that suit against two or more defendants in county wherein suit is lawfully maintainable as to any of them may be maintained therein against all necessary parties, are all persons whose presence is necessary to determination of entire controversy, that is, those who are interested in resisting plaintiff's demands immediately or subsequently and whose rights will be affected thereby. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Liegli v. Trinity Finance Corp., 211 S.W.2d 318.—Venue 22(4).*

Tex.Civ.App.—Galveston 1941. Action by plaintiff to recover funds advanced to subcontractor for use on highway improvement, brought against subcontractor and contractor who had represented to plaintiff that contractor would pay amount due by him to subcontractor directly to plaintiff, and to foreclose plaintiff's statutory lien on funds due to contractor and remaining in hands of state highway department, could be maintained in county of residence of subcontractor against whom plaintiff made

prima facie case, and plea of privilege filed by contractor who resided in another county was properly overruled, since all the parties were "necessary parties" under the venue statute to complete relief to which plaintiff was entitled. *Vernon's Ann.Civ. St. art. 1995, subd. 4; arts. 5472a, 5472b, 6674m.—De Montel v. Brance, 151 S.W.2d 859.—Venue 22(6).*

Tex.Civ.App.—Galveston 1941. In action against automobile dealers based on dealers' wrongful refusal to pay to assignee of purchase-money notes and mortgages on automobiles, balance due on automobiles which had been repossessed by dealers, wherein buyers of repossessed automobiles, whose rights had not been foreclosed were not made parties, trial court committed fundamental error in appointing receiver to take charge of the repossessed automobiles since buyers were "necessary parties".—*Arnold Motor Co. v. C. I. T. Corp., 149 S.W.2d 1056.—Chat Mfg 281.*

Tex.Civ.App.—Galveston 1941. Where nominated independent executrix resigned and was dismissed from consolidated proceeding involving validity of a will, and court after refusing probate of will assessed costs against executrix and her two sureties, and executrix filed an application to read-judge costs but did not name sureties or other parties to consolidated proceeding as parties, other parties and sureties were "necessary parties", and application for such relief in failing to name them as parties was fatally defective.—*Russ v. Russ, 147 S.W.2d 972.—Wills 409.*

Tex.Civ.App.—Galveston 1941. An application for leave to file petition for mandamus to compel district court judge to set aside his order sustaining contest to relator's affidavit of inability to pay costs of appeal or to give security therefor in a cause in which judgment was rendered against relators and to compel the judge to direct district clerk and official court reporter to prepare and deliver without charge a transcript and a statement of facts in the cause was fatally defective for want of "necessary parties" where neither the district clerk nor the official court reporter nor the adverse litigants were made parties.—*Caldwell v. Boyd, 146 S.W.2d 296.—App & E 571.*

Tex.Civ.App.—Galveston 1940. An application for writ of mandamus to compel district court clerk and court reporter to prepare and furnish a requested transcript and statement of facts to administratrix de bonis non without payment or without security therefor in a cause wherein relator was plaintiff and cross-defendant was fatally defective for want of "necessary parties" where parties whose interest in such cause were adverse to relator, were not made parties. *Rev.St.1925, art. 2072 (V.A.T.S. Probate Code, § 29); Vernon's Ann.Civ.St. art. 2276.—Durden v. Patterson, 146 S.W.2d 296.—Mand 152.*

Tex.Civ.App.—Galveston 1940. An application for leave to file petition for mandamus to compel district court judge to set aside his order sustaining contest to relator's affidavit of inability to pay costs of appeal or to give security therefor in a cause in

which judgment was rendered against relators and to compel the judge to direct district clerk and official court reporter to prepare and deliver without charge a transcript and a statement of facts in the cause was fatally defective for want of "necessary parties" where neither the district clerk nor the official court reporter nor the adverse litigants were made parties.—*Durden v. Patterson, 146 S.W.2d 296.—Mand 152.*

Tex.Civ.App.—Galveston 1940. An order granting plaintiffs a temporary injunction against defendants pending trial on merits of a case wherein plaintiffs sought to set aside a church election for pastor and officers was invalid for lack of "necessary parties" defendant, where only four out of forty-six officers chosen at election were made parties, and all officers were interested in and affected by efforts to set aside election and by injunction.—*Davis v. Turner, 145 S.W.2d 258.—Relig Soc 9, 27(3).*

Tex.Civ.App.—Galveston 1940. An application for writ of mandamus to compel district court judge to change records in his court in a cause wherein relator was one of defendants was fatally defective for want of "necessary parties", where other parties who were interested in controversy to which application related were not made parties to the application.—*H. M. Cohen Lumber & Bldg. Co. v. McCalla, 142 S.W.2d 685.—Mand 151(1).*

Tex.Civ.App.—Galveston 1939. Under the venue statute providing that suit against two or more defendants in county wherein maintainable against any of them may be maintained therein against all "necessary parties," quoted words mean every party whose joinder in the suit is necessary to the securing of full relief. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Beckham v. Pantex Pressing Mach., 135 S.W.2d 188.—Venue 22(4).*

Tex.Civ.App.—Galveston 1939. In suit on note payable in Harris county and secured by deed of trust on lands located in Sabine county where mortgagors resided, grantees of mineral interests in the lands subject to mortgage, who purchased without reference thereto, were "necessary parties" to the suit and hence not entitled to have venue of the cause transferred to Sabine county. *Vernon's Ann. Civ.St. art. 1995, subd. 29a.—Hamilton v. Federal Land Bank of Houston, 125 S.W.2d 1088.—Venue 22(6).*

Tex.Civ.App.—Galveston 1936. Statute providing that suits lawfully maintainable against any defendant in certain county may be maintained there against all necessary parties uses term "necessary parties" in strict sense as embracing only those without whose presence before court no adjudication of any of the subject-matter could be had. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.—West Texas Const. Co. v. Guaranty Bldg. & Loan Co., 93 S.W.2d 774.—Venue 22(4).*

Tex.Civ.App.—Galveston 1935. Where subpurchasers who took subject to trust deed securing vendor's lien note, sued to cancel deeds to substitute trustee's grantee and subgrantee because of invalidity of trustee's sale, assignee of trust deed

held not "necessary party"; only such trustee and the two grantees being "necessary parties."—*Collier v. Ford*, 81 S.W.2d 821, writ dismissed.—*Can of Inst* 35(3).

Tex.Civ.App.—Galveston 1935. In suit by taxpayers' association to enjoin school district from partially restoring temporary emergency reductions in teachers' salaries, teachers held "necessary parties," since suit sought abrogation of provisions of teachers' contracts contemplating restoration of original salaries when possible.—*Taxpayers' Ass'n of Harris County v. Houston Independent School Dist.*, 81 S.W.2d 815, writ dismissed.—*Schools* 111.

Utah 1940. Parties who were not real parties in interest to suit involving land, and who would not be affected by a modification or reversal of decree, were not "necessary parties" to appeal, and failure to serve bill of exceptions on such parties was not fatal.—*Nielson v. Smith*, 107 P.2d 158, 100 Utah 342.—*App & E* 327(4).

Va. 1990. Owners of condominium units subject to mechanic's lien were "necessary parties" to suit to enforce liens because owners each had interest in subject matter which could likely be defeated or diminished by lienors' claims.—*Mendenhall v. Douglas L. Cooper, Inc.*, 387 S.E.2d 468, 239 Va. 71.—*Mech Liens* 263(3).

Va. 1974. "Necessary parties" include all persons having a legal or beneficial interest in subject matter of suit.—*McDougle v. McDougle*, 203 S.E.2d 131, 214 Va. 636.—*Parties* 18, 29.

Va. 1945. Where husband, after obtaining divorce from first wife on ground of adultery upon wife's failing to appear, remarried and had a child by his second wife, second wife and child were not "necessary parties" to first wife's suit to have divorce decree vacated. Code 1942, §§ 5110, 5270.—*Tarr v. Tarr*, 35 S.E.2d 401, 184 Va. 443.—*Divorce* 167.

Va. 1942. The personal representative and the widow of a deceased purchaser are "necessary parties" to a suit to foreclose the vendor's lien.—*Rector v. Tazewell Coal & Iron Co.*, 20 S.E.2d 504, 179 Va. 803.—*Ex & Ad* 439; *Ven & Pur* 279.

Va. 1941. Since personal representatives of deceased trustee were "necessary parties" to suit by beneficiary under trust deed to set aside trustee's sale of realty, the uncorroborated testimony of beneficiary, who was an "adverse or interested party" within meaning of statute requiring that testimony of such party in action against personal representative of deceased party be corroborated, was insufficient to overcome prima facie evidence that sale was at request of beneficiary, afforded under statute by recital to that effect in trustee's deed. Code 1919, §§ 6196, 6209.—*Wills v. Chesapeake Western Ry. Co.*, 16 S.E.2d 649, 178 Va. 314.—*Ex & Ad* 450.

Va. 1941. Where trustee, by whom deed was executed, was dead, personal representatives of such deceased trustee were "necessary parties" to suit to set aside such deed.—*Wills v. Chesapeake*

Western Ry. Co., 16 S.E.2d 649, 178 Va. 314.—*Ex & Ad* 439.

Va. 1940. The owners of mineral rights in certain land were not tenants in common or joint tenants with owners of the surface and were not "necessary parties" in suit to partition surface of the tract.—*Buchanan Coal Co. v. Street*, 9 S.E.2d 339, 175 Va. 531.—*Joint Ten* 3; *Partit* 46.1; *Ten in C* 1.

Va. 1911. All persons who are interested in the subject-matter of a suit, and who will be affected by the results thereof, are "necessary parties."—*Sweeney v. Foster*, 71 S.E. 548, 112 Va. 499.—*Equity* 94.

Wash. 1941. The "necessary parties" to a proceeding to condemn a private way of necessity across a tract of land were every owner, incumbent or other person or party interested in the land, or any part thereof over which the right of way was sought, so far as the same could be ascertained from public records. Rem.Rev.Stat. §§ 921 et seq., 922, 925, 10596-2.—*State ex rel. Wirt v. Superior Court for Spokane County*, 116 P.2d 752, 10 Wash.2d 362.—*Em Dom* 177.

Wash. 1936. Where, at time receiver of insolvent corporation instituted action to set aside, as preferential, lien of judgment against corporation, no payment had been received by judgment creditor from any of guarantors, but creditor held ample collateral, which had been deposited by guarantors, with which to pay judgment in full, guarantors held not "necessary parties" to action, since judgment against creditor would have bound them without their being made parties. Rem.Rev.Stat. § 5831-2.—*Stang v. Puget Sound Nat. Bank of Tacoma*, 63 P.2d 373, 188 Wash. 503.—*Corp* 560(10).

W.Va. 1944. The personal representative of deceased husband, who signed spouses' joint and several notes for purchase price of land, and spouses' son, in whose name they contracted to purchase land after their default in payments therefor under previous contract and execution of tax deed of land to vendor, were not "necessary parties" to suit for enforcement of vendor's lien, reserved in deed to wife, after default in payments under son's contract, as vendor had right to pursue either maker of notes separately.—*Rosier v. McDaniel*, 28 S.E.2d 908, 126 W.Va. 434.—*Ven & Pur* 279.

W.Va. 1942. In suit to subject land of decedent to sale for his debts, personal representative of decedent and his heirs and known creditors are "necessary parties". Code 1931, 44-80-7.—*Ravena Furnace & Heating Co. v. Cotts*, 22 S.E.2d 371, 124 W.Va. 750.—*Ex & Ad* 356, 439.

W.Va. 1942. Former trustees under trust agreement executed by bank in connection with reorganization proceedings were "necessary parties" to action brought by successor trustees against endorser of a note which allegedly had been surrendered to endorser through conduct constituting a breach of trust on part of former trustees.—*Harshbarger v. Harrison*, 22 S.E.2d 303, 124 W.Va. 688.—*Trusts* 257.

W.Va. 1938. In suit by judgment lien creditor to set aside conveyances as fraudulent, issuance of execution on judgment is not required, and other lien creditors, although "proper parties," are not "necessary parties."—*Crickmer v. Thomas*, 200 S.E. 353, 120 W.Va. 769.—*Fraud Conv* 241(5), 253.

W.Va. 1938. In suit to partition land, all known claimants to any part of or interest in the land, or whose interests are made to appear at any stage of the suit, are "necessary parties."—*Lambert v. Peters*, 200 S.E. 33, 120 W.Va. 741.—*Partit* 46.1.

W.Va. 1937. In suit by state under statute to sell lands, the title to which is vested in the state by purchase at tax sale, former owner of land or persons claiming an interest therein, if known, are "necessary parties." Code 1931, 37-3-10; Code 1923, c. 105, § 6.—*Bank of Quinwood v. Becker*, 194 S.E. 849, 119 W.Va. 534.—*Tax* 679(5.1).

W.Va. 1937. Trustees and beneficiary under trust deed, which had been duly recorded prior to institution of suit by state under statute to sell mortgaged lands, the title to which had vested in state under tax purchase, were "necessary parties." Code 1931, 37-3-10; Code 1923, c. 105, § 6.—*Bank of Quinwood v. Becker*, 194 S.E. 849, 119 W.Va. 534.—*Tax* 679(5.1).

W.Va. 1937. In suit by state under statute to sell lands, the title to which is vested in the state under forfeiture, former owner of land or persons claiming an interest therein, if known, are "necessary parties." Code 1931, 37-3-10; Code 1923, c. 105, § 6.—*Bank of Quinwood v. Becker*, 194 S.E. 849, 119 W.Va. 534.—*Tax* 855.

W.Va. 1933. In divorced wife's suit to determine her status as creditor of divorced husband's estate, and to have her rights adjudicated under settlement providing for monthly payments to be made by divorced husband in his lifetime and out of his estate after his death, creditors of estate held "necessary parties."—*Murray v. Price*, 172 S.E. 541, 114 W.Va. 425.—*Ex & Ad* 438(10).

Wis. 1902. Persons having an interest in the controversy, and who ought to be made parties in order that the court may act on that rule which requires it to decide on and finally determine the entire controversy and do complete justice by adjusting all the rights involved in it, are commonly termed "necessary parties."—*Castle v. City of Madison*, 89 N.W. 156, 113 Wis. 346.

Wis.App. 1987. "Necessary parties" to foreclosure action are parties whose interests are inseparable, such that court would be unable to determine rights of one party without affecting rights of another; necessary defendants include owners in fee, who hold equity of redemption, or holders of notes that are due and secured by mortgage.—*Wisconsin Finance Corp. v. Garlock*, 410 N.W.2d 649, 140 Wis.2d 506, review denied 416 N.W.2d 297, 141 Wis.2d 985.—*Mtg* 427(1).

Wyo. 1940. In county's action to foreclose lien for general taxes wherein drainage district claimed that lien for drainage assessment was of equal dignity with lien for general taxes, holders of drain-

age district bonds were not "necessary parties", where bondholders were virtually represented by district, and interests of district coincided with and did not conflict with interests of bondholders, and district acted in good faith without collusion. W.C.S.1945, §§ 32-1801 to 32-1807, 71-1435, 71-1436, 71-1547 to 71-1549.—*Board of Com'rs of Big Horn County v. Bench Canal Drainage Dist.*, 108 P.2d 590, 56 Wyo. 260.—*Tax* 641.

Wyo. 1940. In quiet title suit by purchaser at second mortgage foreclosure sale, where owner of first mortgage was substituted as a defendant and filed a cross-petition to foreclose first mortgage, and mortgagor and her grantee and grantee's grantee were made defendants and served with process in district court but defaulted, mortgagor and grantees, although "necessary parties" to proceeding embodied in cross-petition, were not "necessary parties" to purchaser's appeal from judgment ordering first mortgage foreclosed, since position of mortgagor and grantees could not be changed for the worse by result of appeal.—*Turner v. Binnering*, 105 P.2d 574, 56 Wyo. 188.—*App & E* 327(6).

Wyo. 1939. Appointment of a substitute testamentary trustee was not void but at most voidable as to beneficiary who was not made a party to proceeding and contended that no written application for appointment was filed, since not all beneficiaries were "necessary parties."—*State v. Underwood*, 86 P.2d 707, 54 Wyo. 1.—*Trusts* 169(3).

NECESSARY PARTIES DEFENDANT

N.D.Okla. 1940. In action by nonresident holder of special improvement bonds against municipality to have determined amount due by municipality on account of paving improvements abutting municipally owned property in improvement district, county commissioners and members of the excise board having power to levy assessments to pay bonds were not "necessary parties defendant", since instant action could only determine city's liability and, if requisite levies to satisfy municipality's liability were not made, bondholder might be compelled to institute ancillary mandamus proceedings.—*Hovenden v. City of Bristow*, 34 F.Supp. 674.—*Mun Corp* 955(1.5).

Cal. 1942. All members of county board of supervisors are not "necessary parties defendant" in taxpayer's action to recover county funds illegally expended, as for repairs and alterations of county quarry buildings without letting of contract therefor by competitive bidding. Pol.Code, § 4041.18 (repealed). See Govt.Code, § 25351 et seq.—*Miller v. McKinnon*, 124 P.2d 34, 20 Cal.2d 83, 140 A.L.R. 570.—*Counties* 196(6).

Ill. 1944. A county and village wherein lots, sought to be sold by administrator of decedent's estate for payment of estate's debts, where located, were not parties whose rights were sought to be affected by decree directing sale of such lots either subject to liens of general taxes and special assessments or disencumbered thereof, with provision for payment thereof from proceeds of sale, and hence were not "necessary parties defendant" in sale pro-

ceedings, in absence of prayer in petition for relief against such liens. S.H.A. ch. 3, § 384.—Baker v. Devlin, 54 N.E.2d 449, 386 Ill. 441.—Ex & Ad 335.

Ind. 1942. In action against city to review action of civil service commission confirming chief of police's demotion of member of city police department, the civil service commission and the chief of police were not "necessary parties defendant", since civil service commission is not such a separate legal entity as may sue or be sued without express statutory authority and the chief of police is simply officer of city acting for the city. Burns' Ann.St. §§ 48-6154, 48-6155, 48-6156.—Coleman v. City of Gary, 44 N.E.2d 101, 220 Ind. 446.—Mun Corp 180(2).

Kan. 1946. "Necessary parties defendant" include those who have such an interest in the controversy that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience.—Hubert v. Board of Public Utilities of Kansas City, 174 P.2d 1017, 162 Kan. 205.—Parties 32.

S.D. 1956. "Necessary parties defendant" are those without whom a complete determination or settlement of the question involved cannot be made. SDC 33.0409, 39.0713.—Keeley Lumber & Coal Co. v. Dunker, 77 N.W.2d 689, 76 S.D. 281.—Parties 29.

Tex. 1943. In proceedings for determination of existence of vacant and unsurveyed land belonging to free school fund on application for lease of such land, where persons claiming interest in land, whose claims could have been discovered by examination of records of General Land Office, office of county clerk of county in which land is located, and tax rolls were not named as parties defendant, case was properly dismissed for lack of "necessary parties defendant".—State v. Stanolind Oil & Gas Co., 174 S.W.2d 588, 141 Tex. 446.—Pub Lands 173(16.4).

Tex.Civ.App.—Austin 1942. Royalty owners are not "necessary parties defendant" to a suit to set aside permit granted by Railroad Commission to drill an oil well as an exception to spacing rule 37.—Railroad Commission v. Shell Oil Co., 164 S.W.2d 773, writ refused.—Mines 92.35.

Tex.Civ.App.—Austin 1940. Royalty owners were not "necessary parties defendant" to appeal from Railroad Commission's orders granting permits to drill oil wells as exceptions to spacing rule 37.—Shell Petroleum Corporation v. Railroad Commission of Texas, 137 S.W.2d 797.—Mines 92.35.

Va. 1943. In proceeding by decedent's creditors to establish decedent's undivided half-interest in certain lands by virtue of an alleged lost deed from deceased grantor, grantor's heirs were "necessary parties defendant" to the bill.—Peatross v. Gray, 27 S.E.2d 203, 181 Va. 847.—Ex & Ad 356.

W.Va. 1942. Where trust agreement was executed by bank in connection with reorganization proceedings and certificates of beneficial interest issued to assenting creditors, the holders of such

certificates, and possibly nonassenting creditors and depositors who were not holders, were all beneficiaries of the trust and "necessary parties defendant" to chancery proceeding brought for the purpose of winding up the trust.—Harshbarger v. Harrison, 22 S.E.2d 303, 124 W.Va. 688.—Trusts 61(1).

NECESSARY PARTIES DEFENDANTS

Wis. 1944. In action by municipality to recover money allegedly illegally paid to defendants in connection with purchase from defendants of land on which one defendant held an option, in which action title to land was of no importance except in connection with enforcement of money judgment, grantors of option were not "necessary parties defendants". St.1941, § 62.22(1).—City of Sheboygan v. Finnegan, 13 N.W.2d 923, 245 Wis. 349.—Impl & C C 76; Mun Corp 255.

NECESSARY PARTIES IN INTEREST

Neb. 1931. Injured employee's dependents are not "necessary parties in interest" in employee's compensation action brought during employee's lifetime. Comp.St.1929, § 48-124.—Bliss v. Woods, 235 N.W. 334, 120 Neb. 790.—Work Comp 1195.

NECESSARY PARTIES PLAINTIFF

Ill.App. 4 Dist. 1942. Where undertaking company which purchased ambulance from defendant was a co-partnership consisting of one who served as managing partner and certain members of his family as dormant partners, managing partner was entitled to sue for breach of alleged warranty in connection with sale of the ambulance, and dormant partners were not "necessary parties plaintiff" to the action.—Kassly Undertaking Co. v. Flxible Co., 40 N.E.2d 621, 313 Ill.App. 653.—Partners 199.

Mo. 1944. In action by testamentary trustee to quiet title, beneficiary of testamentary trust and executor of testator's estate were not "necessary parties plaintiff" even though they might have been "proper parties plaintiff." R.S.1939, §§ 850, 1684, 1685 (V.A.M.S. §§ 507.010, 527.150, 527.160).—Boatmen's Nat. Bank of St. Louis v. Rogers, 179 S.W.2d 102, 352 Mo. 763.—Trusts 257.

NECESSARY PARTIES RULE

U.S.Tex. 1999. "Necessary parties rule" in equity mandated that all persons materially interested, either as plaintiffs or defendants in the subject matter of the bill, ought to be made parties to the suit, however numerous they may be.—Ortiz v. Fibreboard Corp., 119 S.Ct. 2295, 527 U.S. 815, 144 L.Ed.2d 715.—Fed Civ Proc 201.

NECESSARY PARTY

U.S.N.Y. 1941. Where the New York Supreme Court made an order under the New York Civil Practice Act authorizing a judgment creditor to maintain an action under the Tucker Act to recover damages from the United States for breach of its contract with the judgment debtor the action could not have been maintained in the Court of Claims,

since the judgment debtor, who was made a "necessary party" by the Civil Practice Act in any action brought pursuant to the order, was entitled to attack the validity of the order and of the judgment on which it was founded, and adjudication of that issue was not within the jurisdiction of the Court of Claims whose authority is narrowly restricted to the adjudication of actions brought against the government alone. Civil Practice Act N.Y. § 795; Jud. Code, §§ 24(20), 145, 28 U.S.C.A. §§ 1346, 1491, 2401, 2402, 2501.—*U.S. v. Sherwood*, 61 S.Ct. 767, 312 U.S. 584, 85 L.Ed. 1058.—Fed Cts 1076.

App.D.C. 1942. A husband is not a "necessary party" to suit by wife to recover damages to herself for injuries negligently inflicted on her person.—*Lansburgh & Bro. v. Clark*, 127 F.2d 331, 75 U.S.App.D.C. 339.—Hus & W 209(2).

App.D.C. 1942. Where mortgagor executed mortgage covering Pennsylvania realty and died resident of Pennsylvania, mortgagor's administrator was a "necessary party" to suit for an accounting against mortgagees by executrix of estate of mortgagor's mother who was the mortgagor's sole heir. D.C.Code 1940, §§ 20-501, 20-505; 20 P.S.Pa. § 772.—*Cain v. Hutson*, 127 F.2d 19, 75 U.S.App. D.C. 335, certiorari denied 63 S.Ct. 53, 317 U.S. 656, 87 L.Ed. 527.—Ex & Ad 439.

App.D.C. 1936. Suit against Secretary of Treasury, Treasurer, and Comptroller General in their official capacities to compel return to processors of processing taxes which had been collected on coconut oil imported from Philippines and had been deposited in United States Treasury, was in effect a "suit against the United States," to which United States was "necessary party," and therefore could not be maintained where United States had not consented to be sued. 26 U.S.C.A. (I.R.C.1939) §§ 2470-2480.—*Haskins Bros. & Co. v. Morgenthau*, 85 F.2d 677, 66 App.D.C. 178, certiorari denied 57 S.Ct. 118, 299 U.S. 588, 81 L.Ed. 433.—U S 125(34).

App.D.C. 1932. In suit to challenge authority of Comptroller General, to withhold money admittedly payable by United States, United States is not "necessary party."—*Richmond, F. & P.R. Co. v. McCarl*, 62 F.2d 203, 61 App.D.C. 290, certiorari denied *Richmond, Fredericksburg & Potomac Railroad Co. v. McCarl*, 53 S.Ct. 506, 288 U.S. 615, 77 L.Ed. 988.—U S 135.

C.A.9 (Ariz.) 1998. Indian community with rights under settlement agreement to store water in Additional Active Conservation Capacity (AACC) behind dam was not "necessary party" to environmental organization's action alleging that government's plan to begin using newly completed AACC violated Endangered Species Act (ESA) with respect to southwestern willow flycatcher and National Environmental Policy Act (NEPA); though community had interest in subject matter of suit and injunction would impair community's interest, community's ability to protect its interest would not be impaired by its absence from suit, as its interest would be adequately represented by existing parties to suit, including government and several cities that

made substantial financial contributions to AACC and were dependent on AACC to meet future water needs. Endangered Species Act of 1973, § 2 et seq., 16 U.S.C.A. § 1531 et seq.; National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.—*Southwest Center for Biological Diversity v. Babbitt*, 150 F.3d 1152.—Fed Civ Proc 211.

C.A.9 (Ariz.) 1998. Nonparty is adequately represented by existing parties, and is thus not a "necessary party" on grounds of inadequate representation, if: (1) the interests of the existing parties are such that they would undoubtedly make all of the nonparty's arguments, (2) the existing parties are capable of and willing to make such arguments, and (3) the nonparty would offer no necessary element to the proceeding that existing parties would neglect. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.—*Southwest Center for Biological Diversity v. Babbitt*, 150 F.3d 1152.—Fed Civ Proc 202.

C.A.9 (Ariz.) 1998. Indian community with rights under settlement agreement to store water in Additional Active Conservation Capacity (AACC) behind dam was not "necessary party" to environmental organization's Endangered Species Act (ESA) and NEPA action against government concerning AACC, on basis that future litigation concerning community's rights under settlement agreement would follow if injunction sought by organization was granted; risk of "inconsistent obligations" arose not from community's absence from suit but from ambiguity in settlement agreement, and ambiguity could result in litigation even if organization's suit was dismissed. Endangered Species Act of 1973, § 2 et seq., 16 U.S.C.A. § 1531 et seq.; National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; Fed.Rules Civ.Proc.Rule 19(a)(2)(ii), 28 U.S.C.A.—*Southwest Center for Biological Diversity v. Babbitt*, 150 F.3d 1152.—Fed Civ Proc 211.

C.A.9 (Cal.) 1983. In action by defense contractor against aircraft manufacturer claiming fraud, breach of contract, economic coercion, refusal to deal, unfair competition and industrial espionage in connection with defendant's marketing of land-based aircraft, government was not "necessary party" where government's absence from suit did not preclude district court from being able to fashion meaningful relief as between the parties. Fed. Rules Civ.Proc. Rules 19, 19(a), (a)(1), 28 U.S.C.A.—*Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, certiorari denied 104 S.Ct. 156, 464 U.S. 849, 78 L.Ed.2d 144.—Fed Civ Proc 219.

C.A.9 (Cal.) 1966. Person not joined in action who is interested in controversy is an "indispensable party" if his interest cannot be severed, or if his absence prevents court from rendering justice between parties before it, or if decree made in his absence will have injurious effect on his interest, or if final determination in his absence will be inconsistent with equity; but, if none of these conditions exist, absent party interested in controversy is merely a "necessary party". Fed.Rules Civ.Proc. rules

12(b) (7), 19(a, b), 28 U.S.C.A.—*Lewis v. Lewis*, 358 F.2d 495.—*Fed Civ Proc* 202, 203.

C.A.7 (Ill.) 1968. Warden who reduced prisoner's grade, resulting in lengthening of time before prisoner would have earned a hearing before parole board, was not a "necessary party" to action brought by prisoner seeking declaratory relief and injunction to resolve dispute as to whether he was eligible for hearing before parole board.—*U. S. ex rel. Campbell v. Pate*, 401 F.2d 55.—*Decl Judgm* 294.

C.A.2 (N.Y.) 1999. Foundation that had allegedly withheld artworks of artist, despite his request for their return, was not "necessary party" in action in which artist's nephew sought return of withheld artworks from parties currently possessing them; complete relief could be accorded among those who were already parties to action, foundation did not appear and assert that its interests could not be protected without its presence as party, and there was no risk of inconsistent judgments. *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.—*Johnson v. Smithsonian Inst.*, 189 F.3d 180, on remand 80 F.Supp.2d 197, affirmed 4 Fed.Appx. 69.—*Fed Civ Proc* 211.

C.A.6 (Ohio) 1979. Individual elected as president of union was not a "necessary party" to action by Secretary of Labor to set aside election on ground that individual received employer campaign contributions where interests of union and individual were so interwoven that disposition of action in absence of individual did not, as a practical matter, impede individual's ability to protect his interests. *Fed.Rules Civ.Proc. Rules* 19, 19(a), 28 U.S.C.A.; *Labor-Management Reporting and Disclosure Act* of 1959, § 402(b), 29 U.S.C.A. § 482(b).—*Marshall v. Local Union 20, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of Commerce*, 611 F.2d 645, 53 A.L.R. Fed. 572.—*Labor* 215.

C.A.4 (Va.) 1992. Purported successor of limited partner was "necessary party" in proceeding brought by limited partner seeking dissolution of limited partnership, as successor's joinder was necessary both to protect his interest and to ensure that resolution of merits of case was binding and final as to all interested parties; amended certificate purporting to remove limited partner and to install successor in its place was challenged as invalid. *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.—*Delta Financial Corp. v. Paul D. Comanduras & Associates*, 973 F.2d 301.—*Fed Civ Proc* 227.

C.A.9 (Wash.) 1994. Governing tribe of reservation on which property was located was "necessary party" to action brought by second tribe challenging administrative determination that certain fractional interests in property escheated to governing tribe; governing tribe clearly had claim to property within its reservation under statute providing that such fractional interests at time of probate do not descend by intestacy or devise but escheat to reservation's recognized tribal government. *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.; *Indian Land*

Consolidation Act, § 207, 25 U.S.C.A. § 2206.—*Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456.—*Admin Law* 673; *Indians* 27(5).

Ct.Cl. 1941. Where patentee assigned all rights under patents only in so far as they related to exclusive use thereof in connection with manufacture, use, and sale of hydroplane boats or the like primarily designed not to leave the surface of the water, an action for alleged unauthorized use of patents involving only hydroplane boats primarily designed to leave the water was properly brought in the name of the administratrix of patentee's estate, since assignee was a non-exclusive licensee under patents, and as such, was not even a "necessary party" plaintiff.—*Fauber v. U.S.*, 37 F.Supp. 415, 93 Ct.Cl. 11.—*Pat* 290(1).

C.C.A.2 1938. In proceeding under the National Labor Relations Act to restrain employers from exerting pressure on employees to join certain union and from discouraging membership in another union, and to invalidate labor contracts between employers and favored union, favored union was not a "necessary party." *National Labor Relations Act* § 8(1, 2), 29 U.S.C.A. § 158(1, 2).—*Consolidated Edison Co. of New York v. N.L.R.B.*, 95 F.2d 390, certiorari granted 58 S.Ct. 1038, 304 U.S. 555, 82 L.Ed. 1524, certiorari granted *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 58 S.Ct. 1041, 304 U.S. 555, 82 L.Ed. 1524, modified 59 S.Ct. 206, 305 U.S. 197, 83 L.Ed. 126.—*Labor* 531.

C.C.A.3 1940. Where issue was properly joined by the service of the Board's complaint to which the employers filed answer, no one else was a "necessary party" and refusal to allow intervention by committee of employees or the individual employees was not error. *National Labor Relations Act*, §§ 8, 10(b), 29 U.S.C.A. §§ 158, 160(b).—*Oughton v. N.L.R.B.*, 118 F.2d 486, certiorari denied 62 S.Ct. 485, 315 U.S. 797, 86 L.Ed. 1198, certiorari denied *Gibbs v. National Labor Relations Board.*, 62 S.Ct. 485, 315 U.S. 797, 86 L.Ed. 1198.—*Labor* 533.

C.C.A.5 1941. An "employees council" which was allegedly dominated by employer was not a "necessary party" to proceeding against employer before the National Labor Relations Board, and was not entitled to a hearing on the question of domination.—*Solvay Process Co. v. N.L.R.B.*, 117 F.2d 83, certiorari denied 61 S.Ct. 1121, 313 U.S. 596, 85 L.Ed. 1549, petition granted 122 F.2d 993.—*Admin Law* 450.1.

C.C.A.5 1941. An "employees council" which was allegedly dominated by employer was not a "necessary party" to proceeding against employer, and was not entitled to a hearing on the question of domination.—*Solvay Process Co. v. N.L.R.B.*, 117 F.2d 83, certiorari denied 61 S.Ct. 1121, 313 U.S. 596, 85 L.Ed. 1549, petition granted 122 F.2d 993.—*Labor* 531.

C.C.A.6 1941. Where employer caused formation and dominated labor organization in the performance of a bargaining contract, the organization was not a "necessary party" to proceedings before board. *National Labor Relations Act* §§ 8(1, 2),

10(b), 29 U.S.C.A. §§ 158(1, 2), 160(b).—N.L.R.B. v. Indiana & Michigan Electric Co., 124 F.2d 50, certiorari granted National Labor Relations Board v. Indiana & Michigan Electric Co, 62 S.Ct. 1276, 316 U.S. 657, 86 L.Ed. 1736, on remand 1943 WL 10046, affirmed 63 S.Ct. 394, 318 U.S. 9, 87 L.Ed. 579.—Labor 531.

C.C.A.9 (Cal.) 1939. In action by deceased French resident's heirs against their agents and trustees to recover damages for fraud in procuring their consent to the sale of California oil land, complaint in intervention filed by resident's local administrator was properly stricken since, if heirs' cause of action was realty, the right to recover was vested in them, and the administrator was a "proper party" but not a "necessary party," and if their cause of action was personalty, heirs still had the right to recover, since under the laws of France they were vested with an absolute title. Prob.Code § 581.—Houze v. Lazard, 106 F.2d 707.—Ex & Ad 439.

C.C.A.3 (Del.) 1940. If absent party's legal interest is cognizable in the suit but is not joint with that of plaintiff or defendant, and absent party should be joined in order to afford complete relief to plaintiff and defendant, the absent party is a "necessary party" and must be joined if subject to process and within venue of court, but if he is not so subject, the court may or may not within its discretion proceed to judgment as to the parties before it. Rules of Civil Procedure for District Courts, rule 19 (a, b), 28 U.S.C.A. following section 723c.—Samuel Goldwyn, Inc., v. United Artists Corporation, 113 F.2d 703.—Fed Civ Proc 202.

C.C.A.3 (Del.) 1940. If absent party's legal interest is cognizable in the suit but is not joint with that of plaintiff or defendant, and absent party should be joined in order to afford complete relief to plaintiff and defendant, the absent party is a "necessary party" and must be joined if subject to process and within venue of court, but if he is not so subject, the court may or may not within its discretion proceed to judgment as to the parties before it. Fed.Rules Civ.Proc. rule 19(a, b), 28 U.S.C.A.—Samuel Goldwyn, Inc., v. United Artists Corporation, 113 F.2d 703.—Fed Civ Proc 202.

C.C.A.7 (Ind.) 1938. A person who is not joined in action but who is interested therein is an "indispensable party" if his interest cannot be severed or if his absence prevents court from rendering judgment between parties before it, or if decree made in his absence will have injurious effect on his interest, or if final determination in his absence will be inconsistent with equity, but if none of such conditions exist, party is merely a "necessary party."—Montfort v. Korte, 100 F.2d 615.—Fed Civ Proc 203; Parties 18, 29.

C.C.A.6 (Ky.) 1943. One who had parted with interest in Haskell grant was not a "proper" or "necessary party" to action to forfeit grant to commonwealth for failure to list land and pay taxes thereon. Acts Ky.1906, c. 22, art. 3.—Pen-Ken Gas & Oil Corp. v. Warfield Natural Gas Co., 137 F.2d 871, certiorari denied 64 S.Ct. 431, 320 U.S. 800, 88

L.Ed. 483, rehearing denied 64 S.Ct. 634, 321 U.S. 803, 88 L.Ed. 1089.—Tax 851.

C.C.A.1 (Mass.) 1936. In stockholder's suit against national bank and its receiver seeking to rescind stock contracts and cancel certificates because of fraud of bank and its officers and involving winding up of bank's affairs, bank held "necessary party," and hence removal to federal court by receiver alone was improper. 28 U.S.C.A. §§ 1331 et seq., 1441, 1445, 1447.—Bailen v. Deitrick, 84 F.2d 375, certiorari denied 57 S.Ct. 44, 299 U.S. 579, 81 L.Ed. 427.—Rem of C 77.

C.C.A.8 (Minn.) 1945. Where vendee had obtained fire policy providing that in case of fire loss proceeds should be payable to vendee and vendor as their interests should appear, under Minnesota law, vendor as third-party beneficiary was a "real party in interest in action on policy", and vendee did not have a joint interest with vendor making her a "necessary party" under Federal Rules. Federal Rules of Civil Procedure, rules 17, 19, 28 U.S.C.A. following section 723c.—Capital Fire Ins. Co. of Cal. v. Langhorne, 146 F.2d 237.—Fed Civ Proc 222; Insurance 3567.

C.C.A.8 (Minn.) 1934. Purchaser of stock owned by corporation in receivership which paid substantial sums of money on contract of sale negotiated by receivers and confirmed by District Court was "necessary party" to appeal from order confirming sale, requiring appeal of creditor not joining purchaser as party to be dismissed.—McLean v. Jaffray, 71 F.2d 743, certiorari denied 55 S.Ct. 118, 293 U.S. 602, 79 L.Ed. 694.—App & E 322.

C.C.A.8 (Mo.) 1936. Contractor who made no claim to fund which had been paid into court and who was not substantially affected by decree fixing priorities of claimants to fund held nominal party without interest in decree, and hence not "necessary party" to appeal.—Martin v. National Surety Co., 85 F.2d 135, certiorari granted 57 S.Ct. 232, 299 U.S. 536, 81 L.Ed. 395, affirmed 57 S.Ct. 531, 300 U.S. 588, 81 L.Ed. 822.—App & E 323(2).

C.C.A.2 (N.Y.) 1946. Where policyholder of mutual insurance company charged that officer caused company to pay him excessive salary for which he gave no consideration, that he caused insurance company to pay another company which officer dominated unwarranted commissions and fees, and that officer caused insurance company to sell securities at less than their value, and sought an accounting, the defendant officer was a "necessary party" to three of the four causes of action, but was not an "indispensable party" to cause of action asserted against the other company.—Koster v. (American) Lumbermens Mut. Cas. Co., 153 F.2d 888, certiorari granted 67 S.Ct. 61, 329 U.S. 700, 91 L.Ed. 611, affirmed 67 S.Ct. 828, 330 U.S. 518, 91 L.Ed. 1067.—Fed Civ Proc 222.

C.C.A.2 (N.Y.) 1940. A complaint alleging that plaintiff rendered services to the Chinese government, that the Chinese government thereafter sent a sum of money to its consul general at New York City for payment to plaintiff, but that consul converted and appropriated the money so received,

sufficiently alleged an intent to create a trust, and an intent to make plaintiff beneficiary of the trust, and stated a cause of action against consul general, without joinder of the Chinese government as a party defendant since it was not a "necessary party."—*Carl Byoir & Associates v. Tsune-Chi Yu*, 112 F.2d 885, certiorari denied 61 S.Ct. 138, 311 U.S. 699, 85 L.Ed. 453.—*Trusts 366(3), 371(2)*.

C.C.A.2 (N.Y.) 1940. Where suit is by a beneficiary to hold a trustee for breach of trust, the settlor is not a "necessary party."—*Carl Byoir & Associates v. Tsune-Chi Yu*, 112 F.2d 885, certiorari denied 61 S.Ct. 138, 311 U.S. 699, 85 L.Ed. 453.—*Trusts 366(3)*.

C.C.A.2 (N.Y.) 1937. Co-adventurer who, together with plaintiff, had paid money to defendant co-adventurers for interest in invention for which patent was pending held not a "necessary party" to plaintiff's suit to disaffirm contract on ground that he had been deceived while he still could have withdrawn, where plaintiff asked only for his share of money paid, and where other co-adventurer knew of deceit for four and one-half years, and took no action, since he could not subject defendants to a second suit.—*Fitzgerald v. McFadden*, 88 F.2d 639.—*Can of Inst 35(3)*.

C.C.A.10 (Okla.) 1941. Where plaintiff sought mandatory injunction not only against defendants to compel them to resume business relations with plaintiff, but also against labor union and its members who were employed by defendants, and union in its motion of intervention stated that union was engaged in a labor dispute with plaintiff, that purpose of plaintiff's action was to prevent union members from refusing to handle plaintiff's merchandise and that members' refusal to handle plaintiff's freight was the only reason why defendants refused to accept plaintiff's freight, union was the "real party in interest" or at least was a "necessary party" to controversy and its right of intervention was absolute. Federal Rules of Civil Procedure, rule 24(c), 28 U.S.C.A.—*International Broth. of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 523, of Tulsa, Okl. v. Keystone Freight Lines*, 123 F.2d 326.—*Fed Civ Proc 337*.

C.C.A.9 (Or.) 1936. Person not joined in action who is interested in controversy is "indispensable party" if his interest cannot be severed, or if his absence prevents court from rendering justice between parties before it, or if decree made in his absence will have injurious effect on his interest, or if final determination in his absence will be inconsistent with equity; but, if none of these conditions exist, absent party interested in controversy is merely a "necessary party". 28 U.S.C.A. § 1391; Equity Rule 39, 28 U.S.C.A. Appendix.—*State of Washington v. U.S.*, 87 F.2d 421.—*Fed Civ Proc 203*.

C.C.A.3 (Pa.) 1939. Where defendant filed an opposition to registration of contested trade-marks before the Examiner of Interferences in Patent Office, continued its opposition when an appeal was taken by plaintiff to the Commissioner of Patents who affirmed Examiner's decision, and also filed an

answer in equity suit to determine plaintiff's right to registration, the Commissioner of Patents was not a "necessary party" to suit. 35 U.S.C.A. §§ 145, 146.—*Century Distilling Co. v. Continental Distilling Co.*, 106 F.2d 486, certiorari denied 60 S.Ct. 581, 309 U.S. 662, 84 L.Ed. 1010.—*Trade Reg 233*.

C.C.A.1 (R.I.) 1945. Where proprietor of registered copyright had transferred to another the right of public performance for profit, but had retained the other eight rights obtained as copyright proprietor, the proprietor could sue for infringement and the transferee was not a "necessary party" to the action. Copyright Act §§ 1, 25, 17 U.S.C.A. §§ 1, 25.—*Widenski v. Shapiro, Bernstein & Co.*, 147 F.2d 909.—*Copyr 81*.

C.C.A.5 (Tex.) 1940. The debtor or his personal representative is not a "necessary party" to a creditors' action to set aside a fraudulent conveyance and to administer conveyed property where debtor has finally parted with all interest in property conveyed and is under no liability to grantee if grantee loses property.—*Keene v. Hale-Halsell Co.*, 118 F.2d 332.—*Ex & Ad 439; Fraud Conv 255(3)*.

C.C.A.5 (Tex.) 1940. In action between private individuals asserting claims to the same land under titles derived from a state, the state is not a "necessary party."—*Spring v. Ohio Oil Co.*, 108 F.2d 560.—*Pub Lands 142*.

C.C.A.5 (Tex.) 1937. A receiver appointed by federal court in suit in equity to stand by and ultimately take over and distribute any surplus assets recovered by trustee in bankruptcy was neither a "proper" nor a "necessary party" to suit by bankruptcy trustee to recover oil and gas lease and hence his joinder in bringing suit could be disregarded.—*Stanolind Oil & Gas Co. v. Logan*, 92 F.2d 28, certiorari denied 58 S.Ct. 409, 302 U.S. 763, 82 L.Ed. 592, certiorari denied 58 S.Ct. 522, 303 U.S. 636, 82 L.Ed. 1097.—*Bankr 3066(4.1)*.

D.Ariz. 1997. Indian tribe was "necessary party" in action brought by the elders of Indian village to enjoin federal agencies from proceeding with construction of wastewater treatment facilities on Indian reservation until environmental impact statement (EIS) had been completed; tribe had significant interest in project, which was brought to alleviate health problems on reservation and which employed various tribal members, and complete and appropriate relief could not be accorded in tribe's absence, as injunction entered only against federal agencies would not prevent tribe from completing construction. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—*Village of Hotvela Traditional Elders v. Indian Health Services*, 1 F.Supp.2d 1022, affirmed 141 F.3d 1182, certiorari denied *Evehema v. Indian Health Services*, 119 S.Ct. 877, 525 U.S. 1107, 142 L.Ed.2d 777.—*Fed Civ Proc 211*.

N.D.Cal. 1944. A person not joined as party in action, who is interested in the controversy, is an "indispensable party" if his interest cannot be severed or if his absence prevents court from rendering justice between parties before it, or if decree in his absence will injuriously affect his interest, or if final determination in his absence will be inconsis-

tent with equity; but if none of these conditions exist, absent party is merely a "necessary party". Fed.Rules Civ.Proc. rule 19(a), 28 U.S.C.A.—American Ins. Co. v. Bradley Min. Co., 57 F.Supp. 545.—Fed Civ Proc 203; Parties 18, 29.

N.D.Cal. 1938. In suit by city taxpayer and private water company serving city to enjoin sale and disposition of bonds by city for construction or purchase of municipal water plant, partly with federal funds to be granted under federal statutes, under complaint alleging that federal grant would be unlawful, and that city was attempting to force water company to sell its plant for inadequate price, and alleging malice or coercion on part of public works administrator, administrator was a "necessary party." National Industrial Recovery Act, §§ 202, 203, 40 U.S.C.A. §§ 402, 403.—California Water Service Co. v. City of Redding, 22 F.Supp. 641, affirmed 58 S.Ct. 865, 304 U.S. 252, 82 L.Ed. 1323.—Mun Corp 1000(4); Waters 183(1), 183(3).

N.D.Cal. 1938. The absence of a party who may be sued in the District of Columbia does not make him any the less a "necessary party."—California Water Service Co. v. City of Redding, 22 F.Supp. 641, affirmed 58 S.Ct. 865, 304 U.S. 252, 82 L.Ed. 1323.—Parties 29; Waters 183(1).

S.D.Cal. 1956. Where plaintiffs brought class suit, against, inter alia, Bureau of Reclamation officials operating dam, to establish and enforce right of class to flow of water to satisfy downstream state-created water rights, which reclamation laws directed bureau officials to respect, but which they were allegedly unlawfully invading, and defendants asserted superior water rights in government, determination of relative rights of government and plaintiffs was inevitably necessary, and government was "necessary party" to complete relief by binding judgment as to those water rights, within purview of statute waiving sovereign immunity, even though government was not indispensable party to injunctive relief against officials alone. 43 U.S.C.A. § 666.—Rank v. Krug, 142 F.Supp. 1, affirmed in part, reversed in part State of Cal. v. Rank, 293 F.2d 340, on rehearing 307 F.2d 96, certiorari granted City of Fresno v. California, 82 S.Ct. 865, 369 U.S. 836, 7 L.Ed.2d 842, certiorari granted Dugan v. Rank, 82 S.Ct. 865, 369 U.S. 836, 7 L.Ed.2d 842, certiorari granted Delano-Earlimart Irrigation District v. Rank, 82 S.Ct. 1586, 370 U.S. 936, 8 L.Ed.2d 806, affirmed in part 83 S.Ct. 996, 372 U.S. 627, 10 L.Ed.2d 28, affirmed in part, reversed in part 83—Fed Civ Proc 219.

S.D.Cal. 1936. In proceeding to review order of Deputy Commissioner denying claim for compensation under Longshoremen's and Harbor Workers' Compensation Act, Deputy Commissioner is only "necessary party," but after action has been instituted against Deputy Commissioner employer and insurance carrier may intervene as parties having an interest in matter. Longshoremen's and Harbor Workers' Compensation Act, § 21(a, b, d), 33 U.S.C.A. § 921(a, b, d).—Didier v. Crescent Wharf & Warehouse Co., 15 F.Supp. 91.—Admin Law 673; Work Comp 1867.

D.Conn. 1998. Generally, absent party is a "necessary party" if court's judgment, without joiner, would require the absent party to do something or to change any of its positions. Fed.Rules Civ. Proc.Rule 19(a)(1), 28 U.S.C.A.—M.C. By and Through Mrs. C. v. Voluntown Bd. of Educ., 178 F.R.D. 367.—Fed Civ Proc 202.

D.Del. 1993. Patent owner should be viewed as "necessary party" if it retains any interest in patent.—Pfizer Inc. v. Elan Pharmaceutical Research Corp., 812 F.Supp. 1352.—Pat 290(1).

D.D.C. 1954. Indian, as owner of equitable or beneficial interest in land as to which Indian had given plaintiff a deed and as to which plaintiff had, pursuant to order of Secretary of Interior, given deed conveying land to United States in trust for the Indian, was a "necessary party" to plaintiff's action to cancel his deed. Indian General Allotment Act, § 1 et seq., 25 U.S.C.A. § 331 et seq.—Spriggs v. McKay, 119 F.Supp. 232, affirmed 228 F.2d 31, 97 U.S.App.D.C. 60.—Indians 27(5).

D.D.C. 1940. The United States is not "necessary party" to suit for recovery of fund in United States Treasury if fund is one in which United States has no proprietary or possessory rights, and the only question is as to which of several private parties are entitled to fund.—Stitzell Weller Distillery v. Wallace, 30 F.Supp. 1010, affirmed Stitzell-Weller Distillery v. Wickard, 118 F.2d 19, 73 App. D.C. 220.—U S 135.

D.D.C. 1940. Where United States has any proprietary or possessory interest in fund in possession of United States or its officers, any proceeding to establish rights in such fund is "suit against United States," and United States is "necessary party" thereto, and hence such proceeding cannot be maintained unless United States has consented to be sued.—Stitzell Weller Distillery v. Wallace, 30 F.Supp. 1010, affirmed Stitzell-Weller Distillery v. Wickard, 118 F.2d 19, 73 App.D.C. 220.—U S 125(27), 135.

D.D.C. 1940. The interest of Secretary of Agriculture, Secretary of Treasury and United States Treasurer in parity payment fund to which distiller contributed under marketing agreement for distilled spirits industry and which had been placed in United States Treasury, was in their official capacities and was an interest of the United States, and hence United States was "necessary party" to distributor's suit to recover fund. 7 U.S.C.A. § 672; Agricultural Adjustment Act, § 8(2), 7 U.S.C.A. § 608.—Stitzell Weller Distillery v. Wallace, 30 F.Supp. 1010, affirmed Stitzell-Weller Distillery v. Wickard, 118 F.2d 19, 73 App.D.C. 220.—U S 135.

S.D.Fla. 1940. Where surety sought to be relieved of liability under a judgment entered against her on appearance bond on ground that judgment of Florida court in proceeding to remove disabilities of married woman was ineffectual to constitute surety a free dealer so as to impose upon her obligation of a feme sole, cosurety was a "necessary party" in order that it might be determined whether surety was de facto free dealer or a de jure free dealer, or whether she was estopped to take advan-

tage of her own failure to publish final decree ordered by state court, or whether surety's failure to comply with requirement of the decree would render the decree of emancipation void or voidable. F.S.A. §§ 62.27–62.30.—U.S. v. Peacock, 34 F.Supp. 557.—Judgm 387.

S.D.Ga. 1970. "Necessary party" or "indispensable party" is one essential to give court jurisdiction of cause.—Lowe v. Loftus, 314 F.Supp. 620.—Fed Civ Proc 201.

D.Idaho 1943. The medical superintendent of the Idaho State School and Colony was not a "necessary party" entitled to intervene in action against insurer on superintendent's official bond for his refusal to diagnose inmate's spinal injury, where superintendent could not be bound by the action until the defense thereof was tendered to him and his rights could be protected if he accepted such defense. Code Idaho 1932, § 64–407.—Sims v. United Pacific Ins. Co., 51 F.Supp. 433.—Insurance 3567.

N.D.Ill. 1989. Named insured, which was also the corporate parent of company which was asserting right to indemnity under liability policies, had to be joined as "necessary party" to subsidiary's action, where corporate parent claimed interest in outcome of action by denying that payment to subsidiary should reduce its own policy limits. Fed. Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—In re Forty-Eight Insulations, Inc., 109 B.R. 315.—Fed Civ Proc 222.

N.D.Ill. 1988. Injured party was not "necessary party" in insureds' declaratory judgment action brought against insurer; insureds sought declaratory judgment that insurers were obligated to defend them in injured party's action and that position protected injured party's potential interest in viability of suit. Fed.Rules Civ.Proc.Rules 12(b)(7), 19, 28 U.S.C.A.—Fathers of the Order of Mount Carmel, Inc. v. National Ben Franklin Ins. Co. of Illinois, 697 F.Supp. 971.—Decl Judgm 295.

N.D.Iowa 1948. In Iowa, a motor vehicle collision insurance carrier is not a "necessary party" in action brought by insured for damages to insured motor vehicle. (58 I.C.A.) Rules of Civil Procedure of Iowa, rule 2.—Van Wie v. U.S., 77 F.Supp. 22.—Autos 234.

S.D.Iowa 1965. Plaintiff's wife who had a claim under Iowa law for loss of consortium was not an "indispensable party" or a "necessary party" to her husband's negligence action in Iowa. Fed.Rules Civ.Proc. rules 19(a), 21, 28 U.S.C.A.—Wright v. Schebler Co., 37 F.R.D. 319.—Fed Civ Proc 211.

D.Kan. 1993. Ex-husband as recipient of military retirement pay was "necessary party" in ex-wife's mandamus action to compel Secretary of the United States Army, in accordance with Federal Uniformed Services Former Spouses' Protection Act (FUSFSPA), to make direct payments to ex-wife of share of ex-husband's military retirement income pursuant to Kansas court order and thus, ex-husband would not be dismissed from action. 10 U.S.C.A. § 1408; Fed.Rules Civ.Proc. Rule

19(a), 28 U.S.C.A.—Andrean v. Secretary of U.S. Army, 840 F.Supp. 1414.—Fed Civ Proc 1750.

D.Kan. 1959. In action in federal District Court in Kansas for injuries sustained by plaintiff when he touched uninsulated power line of defendant in Kansas and received electrical current, which caused him to fall to the ground, wherein defendant filed a motion to have plaintiff's employer's workmen's compensation insurer, which had allegedly paid compensation to plaintiff, made a party plaintiff, insurer was not a "necessary party" plaintiff and motion would be denied since insurer, under Kansas statute, had no present interest in the action and would have none until there was an assignment by operation of law, or until there was a recovery. G.S.Kan.1949, 44–532; G.S.Kan.1957 Supp. 44–504; Fed.Rules Civ.Proc. rules 17(a), 19, 20, 28 U.S.C.A.—Pyle v. Kansas Gas & Elec. Co., 23 F.R.D. 148.—Fed Civ Proc 222.

E.D.Ky. 1943. Plaintiff's lessee of oil and gas rights in land who was a citizen and resident of same state as defendants was not "necessary party" to determination of fee simple title to land as between plaintiff and defendants, and defendants could not defeat federal jurisdiction based on diversity of citizenship by making such lessee a party to suit by cross-petition. Jud.Code Sec. 24(1), 28 U.S.C.A. 41(1); Federal Rules of Civil Procedure, rules 13(h), 19, 28 U.S.C.A.following section 723c.—Federal Gas, Oil & Coal Co. v. Cassady, 56 F.Supp. 824.—Fed Cts 289.

E.D.Ky. 1937. Where city, in suit to enforce state statutory liens of street improvement bonds, made receiver of national bank in liquidation, which held a mortgage against property to which city's lien attached, a defendant in his official capacity, failure of property owner to join in receiver's petition for removal to federal court held fatal to removal proceedings, since property owner was a "necessary party" to suit. 28 U.S.C.A. §§ 1441, 1445, 1447; Ky.St. §§ 3457, 3459.—City of Corbin v. Varden, 18 F.Supp. 531.—Rem of C 82.

W.D.Ky. 1948. Corporation allegedly wronged by managing powers' transfer of assets to another corporation under alleged fraudulent conspiracy in return for worthless stock was a "necessary party" to stockholder's derivative action against transferee to recover losses.—Smallen v. Louisville Fire & Marine Ins. Co., 80 F.Supp. 279.—Corp 210.

W.D.Ky. 1941. Where contractor defaulted in performance of its contract to construct warehouse, and surety on contractor's bond completed contract, in so far as litigation involved right of surety and right of a bank which had advanced money to contractor for payment of labor performed and material furnished in construction of warehouse to unpaid balance under contract still retained by owner, owner was a mere "stakeholder" and not a "necessary party."—Stock Yards Bank v. National Sur. Corp., 42 F.Supp. 10.—Parties 29.

W.D.La. 1942. Where debtor seeking an agricultural composition and extension under Bankruptcy Act owned only an undivided eight-ninths interest in mortgaged land which he listed in his

schedules, owner of other one-ninth interest was not a "necessary party" to the proceeding, and debtor could secure a stay postponing foreclosure proceedings as to his interest. *Bankr. Act* § 75, 11 U.S.C.A. § 203.—*In re Williams*, 46 F.Supp. 176.—*Bankr* 2204.1.

D.Md. 1986. Maryland Deposit Insurance Fund which was receiver of insured, savings and loan association, and which had financial stake in rescission or reformation of directors' and officers' liability policy issued to insured was "necessary party" to insurer's action for reformation or rescission. *Md. Code, Financial Institutions*, §§ 9-708, 9-709, 10-102.—*American Cas. Co. of Reading, Pa. v. Community Sav. & Loan, Inc.*, 635 F.Supp. 539.—*Fed Civ Proc* 219.

D.Md. 1964. Where plaintiff Maryland corporation alleged that defendant Maryland citizen as agent for plaintiff's lessees, Kentucky citizens, and acting in their behalf, forcibly and unlawfully retained possession of premises, defendant who was resident of Maryland was neither merely nominal nor "formal party" but he was a "proper party", though not a "necessary party" nor "indispensable party," and, accordingly, requisite diversity of citizenship for federal jurisdiction was lacking. *Code Md.1957, art. 53, § 7*; 28 U.S.C.A. § 1441(c).—*Frederick Innkeepers Corp. v. Krisch*, 230 F.Supp. 800.—*Fed Cts* 289.

D.Mass. 1997. Cross-licensor of owner's patents was "necessary party" in action brought by owner and prior licensee for Chapter 11 debtor's alleged infringement of patents, in which debtor counter-claimed for declaration that its license from cross-licensor encompassed patents.—*In re Cambridge Biotech Corp.*, 212 B.R. 10, affirmed 186 F.3d 1356.—*Bankr* 2159.1; *Pat* 290(0.5).

D.Mass. 1980. Fact that union pension fund was deemed an unnecessary party to employee's action under the Veterans' Reemployment Rights Act to obtain credit on his pension rights for period of his military service did not mean that the union pension fund was an improper or impermissible party to the action; rather, the "necessary party" language allowed the employee a choice of whether to sue anyone other than his immediate employer, such as his union or pension fund, and also deprived the employer of the right to bring in such parties or dismiss the action. 38 U.S.C.A. § 2022; *Fed.Rules Civ.Proc. Rule 19(a, b)*, 28 U.S.C.A.—*Bunnell v. New England Teamsters and Trucking Industry Pension Fund*, 486 F.Supp. 714, affirmed 655 F.2d 451, certiorari denied 102 S.Ct. 1253, 455 U.S. 908, 71 L.Ed.2d 446.—*Armed S* 122(3).

D.Mass. 1942. Where legal authority of a superior officer to issue a particular order or regulation is not challenged but only the manner in which he exercises his legal authority is challenged, the superior is a "necessary party" to an action seeking to restrain a subordinate.—*Gargilis v. Gleavy*, 45 F.Supp. 721.—*Inj* 114(3).

D.Mass. 1942. Where a subordinate is merely carrying out an order of his superior officer without exercising any independent discretion of his own,

the superior is a "necessary party" to an action to restrain the subordinate.—*Gargilis v. Gleavy*, 45 F.Supp. 721.—*Inj* 114(3).

E.D.Mich. 2000. In federal diversity action brought by insured against property insurer seeking to recover cash value and replacement cost of water-damaged clothing under property policy, cleaners who cleaned such clothing and were allegedly promised reimbursement by insured under same policy were a "necessary party"; insurer had previously filed interpleader action against cleaners and insured in state court regarding same issue, and failure to include cleaners in federal action could subject insurer to multiple or inconsistent obligations. *Fed.Rules Civ.Proc.Rule 19(a)*, 28 U.S.C.A.—*GMBB, Inc. v. Travelers Indemnity Co.*, 100 F.Supp.2d 465.—*Fed Civ Proc* 222.

E.D.Mich. 1940. Even though lessor's cause of action against insolvent national bank for damages for breach of lease did not ripen until rejection of lease by bank's receiver, where action was for money judgment against the bank and no relief was asked which directly affected the receiver, the receiver was not a "necessary party," notwithstanding the lessor intended eventually to obtain payment of its claim from the receiver.—*Luella Hannan Memorial Home v. First Nat. Bank*, 31 F.Supp. 276.—*Rem of C* 19(9).

E.D.Mich. 1935. District Court held without jurisdiction of suit by Michigan employer for benefit of New York insurance carrier to recover from Michigan resident whose negligence caused injury to employee, amount of compensation paid to deceased employee's widow, on ground that jurisdictional amount and diversity of citizenship was lacking, since, under Michigan statute, employer was a "necessary party," and amount of compensation actually paid to deceased employee's widow was \$776 notwithstanding that full amount of compensation agreed to be paid was \$5,600. *Comp.Laws Mich.1929, § 8454*.—*John Deere Plow Co. v. Ortner*, 11 F.Supp. 375.—*Fed Cts* 289.

W.D.Mich. 1974. Individual class member has no absolute right to intervene in a class action seeking declaratory and injunctive relief and is not "indispensable party" and, in most or all such actions, no absent class member is even "necessary party," but individual class member is merely "permissive party" and court may in its discretion refuse to allow him to intervene personally. *Fed.Rules Civ.Proc. rules 19(a, b)*, 23, 23(b)(2), 28 U.S.C.A.—*Watson v. Branch County Bank*, 380 F.Supp. 945, reversed 516 F.2d 902.—*Fed Civ Proc* 202, 203, 241, 313.

W.D.Mich. 1957. In diversity action in federal District Court in Michigan by administratrix of deceased against electric power company for wrongful death of deceased, deceased's employer's workmen's compensation insurance carrier was a real party in interest under substantive law of Michigan, and, though not an "indispensable party," was a "necessary party," and therefore electric power company's motion to make insurance carrier a party plaintiff for defendant would be granted under

Federal Rules of Civil Procedure respecting joinder of necessary parties and providing that parties may be added by order of court on motion of any party at any stage of the action, where insurance carrier was subject to jurisdiction of District Court as to both service of process and venue and could be made a party without depriving District Court of jurisdiction of parties before it. *Comp.Laws Mich.* 1948, §§ 411.1 et seq., 413.15; *Fed.Rules Civ.Proc.* rules 19, 21, 28 U.S.C.A.—*Carlson v. Consumers Power Co.*, 164 F.Supp. 692.—*Fed Civ Proc* 222, 289.

D.Minn. 1944. Where vendee had obtained Minnesota fire policy providing that in case of fire loss proceeds should be payable to vendee and vendor as their interests should appear, the vendee whose rights were barred by statute of limitations was not an “indispensable” or “necessary party” under Federal Rule. *Federal Rules of Civil Procedure*, rule 19, 28 U.S.C.A. following section 723c.—*Langhorne v. Capital Fire Ins. Co. of California*, 54 F.Supp. 771, affirmed 146 F.2d 237.—*Fed Civ Proc* 222.

E.D.N.Y. 1945. In action by policyholder in mutual insurance company for an accounting as to excess compensation received by an officer and to recover damages which company sustained because such officer caused company to sell securities for less than true value, the officer was a “necessary party”. *Fed.Rules Civ.Proc.* rule 19(a), 28 U.S.C.A.—*Koster v. (American) Lumbermens Mut. Cas. Co.*, 64 F.Supp. 595, affirmed 153 F.2d 888, certiorari granted 67 S.Ct. 61, 329 U.S. 700, 91 L.Ed. 611, affirmed 67 S.Ct. 828, 330 U.S. 518, 91 L.Ed. 1067.—*Fed Civ Proc* 215.

E.D.N.Y. 1942. Under New York law, assignee for benefit of creditors was “necessary party” to chattel mortgagee’s action of replevin to obtain the chattel. *Civil Practice Act N.Y.* § 1096.—*In re Superior Kitchen Products Corp.*, 44 F.Supp. 807, affirmed *Florence Trading Corp v. Rosenberg*, 128 F.2d 557.—*Chat Mtg* 172(4).

S.D.N.Y. 2001. Debtor’s alleged conduct of paying vendors directly instead of creditor holding account receivable claims did not make debtor a “necessary party” in action against creditor by assignee of claims for breach of assignment agreement; such agreement bound only creditor and assignee. *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.—*Third Ave. Trust v. Suntrust Bank*, 163 F.Supp.2d 215.—*Fed Civ Proc* 211.

S.D.N.Y. 2001. Debtor’s alleged delay in providing creditor holding account receivable claims with relevant data regarding distribution to vendors did not render debtor a “necessary party” in action against creditor by assignee of claims for breach of assignment agreement. *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.—*Third Ave. Trust v. Suntrust Bank*, 163 F.Supp.2d 215.—*Fed Civ Proc* 211.

S.D.N.Y. 2001. Debtor’s alleged failure to obtain consent from the Bankruptcy Court to make distribution of a portion of the claims that it had in its possession, and creditor’s alleged conduct of granting debtor permission to make such distribu-

tions, did not make debtor a “necessary party” in action against creditor by assignee of claims for breach of assignment agreement. *Fed.Rules Civ. Proc.Rule* 19(a), 28 U.S.C.A.—*Third Ave. Trust v. Suntrust Bank*, 163 F.Supp.2d 215.—*Fed Civ Proc* 211.

S.D.N.Y. 1997. In action brought by seller of discounted airline tickets against airline for breach of ticket and loan agreements, second seller of tickets, which had not been involved in action, was a “necessary party”; contract in dispute was an agreement between nonparty seller and airline, contract limited rights given to plaintiff seller to same rights as nonparty seller, nonparty seller’s attempts to protect its interest could have been practically impaired or impeded by proceeding with action in nonparty’s absence, and airline was at risk of having another court re-decide its rights and obligations under contract. *Fed.Rules Civ.Proc.Rule* 19(a), 28 U.S.C.A.—*Global Discount Travel Services, LLC v. Trans World Airlines, Inc.*, 960 F.Supp. 701.—*Fed Civ Proc* 211.

S.D.N.Y. 1992. Trustee was not “necessary party” to action brought by security holder under Trust Indenture Act (TIA) seeking payment of principal and interest under notes based upon issuer’s failure to repurchase notes under special purchase obligation; security holder’s choice to pursue its rights under TIA and indenture provision in no way implicated any obligation of trustee under indenture’s subordination article since, unless and until issuer became obligated to make payment to security holder no provision of subordination provision or any other provision of indenture required trustee to act to enforce subordination clause for benefit of holders of senior indebtedness. *Trust Indenture Act of 1939*, § 316(b), as amended, 15 U.S.C.A. § 77ppp(b).—*Upic & Co. v. Kinder-Care Learning Centers, Inc.*, 793 F.Supp. 448.—*Fed Civ Proc* 233.

S.D.N.Y. 1970. A “necessary party” is one who must be joined but whose nonjoinder will not result in dismissal, if there is adequate excuse for his nonjoinder. *Fed.Rules Civ.Proc.* rules 12(b), 12(b)(1), 19, 28 U.S.C.A.—*Jones Knitting Corp. v. A. M. Pullen & Co.*, 50 F.R.D. 311.—*Fed Civ Proc* 202.

S.D.N.Y. 1950. A “necessary party” as distinguished from an “indispensable party” is a person having such an interest in the controversy that he ought to be made a party in order to finally determine the entire controversy, but whose interest is separable.—*Savoia Film S. A. I. v. Vanguard Films*, 10 F.R.D. 64.—*Fed Civ Proc* 202.

S.D.N.Y. 1943. The corporation on whose behalf action is brought by stockbroker is “necessary party”.—*Greenberg v. Giannini*, 50 F.Supp. 33, affirmed 140 F.2d 550, 152 A.L.R. 966.—*Corp* 210.

S.D.N.Y. 1943. Where stockholder’s derivative action by citizen of New York against citizen of California and Delaware corporation not doing business in New York was removed to Federal District Court of New York and service of summons was had upon corporation in Delaware after removal, such service was improper, and since the

corporation was a "necessary party" the action would be dismissed. *Jud.Code* § 51, 28 U.S.C.A. §§ 1391, 1401, 1693, 1695; *Fed.Rules Civ.Proc.* rule 4(f), 28 U.S.C.A.; 28 U.S.C.A. §§ 1447, 1448.—*Greenberg v. Giannini*, 50 F.Supp. 33, affirmed 140 F.2d 550, 152 A.L.R. 966.—*Rem of C* 108, 118.

S.D.N.Y. 1942. In action to declare invalid an allegedly interfering patent where complaint alleged that a certain patent had been assigned to defendant company and the patent itself showed that it had been issued in the name of such company the alleged assignor was not a "necessary party". 35 U.S.C.A. § 291.—*Bernstein v. Seed Fiter & Mfg Co.*, 44 F.Supp. 595.—*Pat* 127.

S.D.N.Y. 1940. Where object of suit is to recover possession of personalty, the one in possession is a "necessary party", and not a "formal party."—*Hennock v. Silver*, 34 F.Supp. 894.—*Detinue* 12; *Replev* 22.

S.D.N.Y. 1939. A suit under Trading with the Enemy Act against Alien Property Custodian to have property of alien corporation seized by custodian applied to payment of corporation's alleged debt to resident creditor was a proceeding in rem and corporation was not "necessary party". Trading with the Enemy Act, 50 U.S.C.A. Appendix, § 1 et seq.—*Sorenson v. Sutherland*, 27 F.Supp. 44, reversed 109 F.2d 714, certiorari granted *Jackson v. Irving Trust Co.*, 60 S.Ct. 1103, 310 U.S. 621, 84 L.Ed. 1394, affirmed 61 S.Ct. 326, 311 U.S. 494, 85 L.Ed. 297.—*War* 12.

S.D.N.Y. 1936. An action for injunctive relief with respect to a decision excluding certain matter from the mails could not be maintained against the postmaster of New York City, but the Postmaster General with whom the ultimate decision concerning mailability rests was a "necessary party" defendant. *Cr.Code* § 212, 18 U.S.C.A. §§ 1468, 1718.—*Hardy v. Goldman*, 38 F.Supp. 1011.—*Inj* 114(3).

S.D.N.Y. 1936. Absent party who is without legal or equitable interest in controversy in suit is not "necessary party," notwithstanding rights of such absentee may be affected indirectly by the decision.—*Baldwin v. Chase Nat. Bank of City of New York*, 16 F.Supp. 918.—*Equity* 94.

S.D.N.Y. 1936. In suits to restrain postmasters from enforcing Public Utility Holding Company Act, rendering letters of unregistered holding companies nonmailable, Postmaster General held not "necessary party" where regulation requiring postmasters to exclude from mails all unmailable matter was concededly valid and suits were based on theory that portion of utility act declaring utility companies' letters to be unmailable matter was void. Public Utility Holding Company Act § 4, 15 U.S.C.A. § 79d; 5 U.S.C.A. § 22.—*Consolidated Gas Co. of New York v. Hardy*, 14 F.Supp. 223.—*Inj* 114(3).

W.D.N.Y. 1942. Where licensee's patent infringement claim was limited to a process used in making a drying oil, the holder of a license limited

to a process in making certain oils used as lubricants, a different process, was not an "indispensable party" nor a "necessary party" to the infringement suit.—*Woburn Degreasing Co of N J v. Spencer Kellogg & Sons*, 46 F.Supp. 959.—*Pat* 290(1).

W.D.N.Y. 1938. One of three executors although not a "necessary party," was a "proper party" and entitled to intervene in suit based upon fraud brought by representative of infant beneficiaries against the other executors and other defendants.—*Dolcater v. Manufacturers & Traders Trust Co.*, 25 F.Supp. 637, appeal dismissed *In re Dolcater*, 106 F.2d 30.—*Ex & Ad* 439.

E.D.N.C. 1953. A "necessary party" is a person having such an interest in the controversy that he ought to be made a party in order to finally determine entire controversy, but whose interest is separable.—*Gregory v. West Virginia Pulp & Paper Co.*, 112 F.Supp. 8.—*Fed Civ Proc* 202.

W.D.N.C. 1999. For purposes of determining diversity jurisdiction, which requires courts to disregard nominal parties and rest jurisdiction only on citizenship of real parties, party is "necessary party" if, in his absence, complete relief cannot be given; further, necessary parties are those who have or claim material interests in the subject matter of a controversy, and those whose interests will be directly affected by an adjudication of the controversy. 28 U.S.C.A. § 1332(a)(1).—*Dempsey v. Transouth Mort. Corp.*, 88 F.Supp.2d 482.—*Fed Cts* 289.

E.D.Okl. 1941. In action in three-judge federal court to enjoin construction of dam pursuant to contract with War Department authorized by act of Congress, Secretary of War is not a "necessary party" if the act is unconstitutional. Act June 28, 1938, c. 795, 52 Stat. 1215; U.S.C.A. Const. Amend. 10.—*State of Oklahoma ex rel. Phillips v. Guy F. Atkinson Co.*, 37 F.Supp. 93, probable jurisdiction noted 61 S.Ct. 831, affirmed 61 S.Ct. 1050, 313 U.S. 508, 85 L.Ed. 1487.—*Fed Civ Proc* 219.

W.D.Okla. 1965. Even if mineral lease assignor who had reserved a certain production payment was not indispensable party to action by lessor for cancellation of lease on ground of failure to pay delay rentals when due, assignor was "necessary party," and federal court to which the action had been removed lacked diversity jurisdiction in view of Oklahoma citizenship of both lessor and assignor. 28 U.S.C.A. § 1441(a, b).—*Cole v. Continental Oil Co.*, 240 F.Supp. 642.—*Fed Cts* 289; *Mines* 78.7(2).

W.D.Okla. 1936. Taxpayer and apartment owner held not entitled to maintain suit in the Western District of Oklahoma to restrain action upon bids for construction of building under authority of Emergency Relief Appropriation Act, since the Secretary of the Interior, who was "necessary party" defendant, in that he was the only person who could receive bids, make awards, or direct any procedure with reference to development of project, could be sued only in the District of Columbia, where he was a resident (*Jud.Code* 51, as amended, 28 U.S.C.A. 112; *Emergency Relief Appropriation*

Act of 1935, 15 U.S.C.A. 728 note).—*Carr v. Desjardines*, 16 F.Supp. 346.—Fed Cts 71.

E.D.Pa. 1988. Law firm, which owned undivided quarter interest in patent for multilumen catheter, was “necessary party,” in patent infringement action, but law firm was not “indispensable party”; “authorized representative” of law firm’s successor firm had submitted undertaking which stated that law firm would not charge alleged infringers or their customers with acts of infringement at issue in action and that law firm agreed to be bound by any decisions of district court or the Court of Appeals for the Federal Circuit as if it were plaintiff in the action. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.—*Howes v. Medical Components, Inc.*, 698 F.Supp. 574.—Pat 290(1).

E.D.Pa. 1986. Export Credit Guarantee Department of Secretary of State for Trade for United Kingdom, which had made insurance payment to lender for part of debt owed by borrower and guarantor, but which could recover insurance payment from lender, if lender recovered debt owed by borrower or guarantor, and which could not bring action against borrower and guarantor, was not prejudiced by not having been joined with lender, would not prejudice borrower and guarantor, if not joined, and, therefore, was not a “necessary party” to lender’s action to recover debt. Fed.Rules Civ. Proc.Rule 19(a), 28 U.S.C.A.—*Nikimiha Securities Ltd. v. Trend Group Ltd.*, 646 F.Supp. 1211.—Fed Civ Proc 219.

E.D.Pa. 1986. Insured was not a “necessary party” to diversity action by insured and first insurer against second insurer to determine which insurer was obligated to defend and indemnify insured in state court action brought by insured’s employee for personal injuries, in that one or the other insurer would defend insured in underlying action, first insurer, whose amount of coverage was more than that provided by second insurer, agreed to indemnify insured for difference in coverage if insured were held liable in underlying action for more than second insurer’s amount of coverage, and there was no substantial risk that interests of insurers would be prejudiced if insured were dismissed. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—*North American Hotels, Ltd. v. Home Indem. Co.*, 112 F.R.D. 25.—Fed Civ Proc 222.

E.D.Pa. 1940. A discharged bankrupt’s action seeking to cancel certificates of discharge of federal tax liens against certain realty and to restore liens against that realty was required to be dismissed for failure to join the United States as a “necessary party” and “indispensable party”. 26 U.S.C.A. (I.R.C.1954) §§ 6325(b) (2), 6325(c).—*Bowen v. Baker*, 35 F.Supp. 852.—Fed Civ Proc 1748.

E.D.Pa. 1938. Where the right to the registration of a trade-mark is unquestioned, and a controversy arises solely between two parties concerning the priority of their respective rights to the trade-mark, the proceedings are “inter partes,” and no question of the validity of the trade-mark or its registrability is raised, no rights of the public are involved, and the Commissioner of Patents is not a

“necessary party.”—*Century Distilling Co. v. Continental Distilling Corp.*, 23 F.Supp. 705.—Trade Reg 233.

E.D.Pa. 1938. Where the Commissioner of Patents refuses registration of a trade-mark on ground that it is merely descriptive or that it is deceptively similar to an existing registered trade-mark, the commissioner is a “necessary party” to a bill brought under statute by applicant to have its right to the registration of the trade-mark determined, since the Commissioner in refusing registration acts as the guardian of the public interests and not merely as the arbiter of a private dispute between two parties. Trade-Mark Act 1905, §§ 5, 9, as amended, 15 U.S.C.A. §§ 85, 89; 35 U.S.C.A. §§ 145, 146.—*Century Distilling Co. v. Continental Distilling Corp.*, 23 F.Supp. 705.—Trade Reg 44, 233.

M.D.Pa. 1948. Person not joined in action who is interested in controversy is an ‘indispensable party’, if his interest cannot be severed, or if his absence prevents court from rendering justice between parties before it, or if decree made in his absence will have injurious effect on his interest or if final determination in his absence will be inconsistent with equity; but, if none of these conditions exist, absent party interested in controversy is merely “necessary party”.—*London v. Kingsley*, 81 F.Supp. 83.—Fed Cts 289.

M.D.Pa. 1940. A proceeding to determine validity of order of a district court, requiring sentence imposed on federal prisoner to run independently of another sentence which was entered while case was before a reviewing court on appeal, could not be maintained as a declaratory judgment suit where the United States which was a “necessary party” was not a party and had not consented to be sued.—*U.S. v. Rollnick*, 33 F.Supp. 863.—Decl Judgm 304; U S 125(17).

W.D.Pa. 1987. Patent owner was “necessary party” to claims of seller of allegedly infringing device for declaration to invalidate patent, unfair competition, wrongful enforcement of invalid patent, and tortious interference with contractual relations and against patent licensee and owner that was not subject to personal jurisdiction, where issue as to validity of patent permeated all four counts of complaint, and where determination of invalidity of patent would impair owner’s ability to defend patent in later litigation due to collateral estoppel implications. Fed.Rules Civ.Proc.Rules 12(b), (b)(7), 19(a, b), 28 U.S.C.A.—*Suprex Corp. v. Lee Scientific, Inc.*, 660 F.Supp. 89.—Pat 290(2).

W.D.Pa. 1948. A “necessary party” is a person having an interest in the controversy, and who ought to be made a party in order that the Court may act on the rule which requires it to decide on, and finally determine, the entire controversy, and to complete justice by adjusting all the rights involved in it.—*Steinberg v. American Bantam Car Co.*, 76 F.Supp. 426, appeal dismissed 173 F.2d 179.—Fed Civ Proc 202.

W.D.Pa. 1935. District court held without jurisdiction of suit between contesting applicants to

review action of Commissioner of Patents in refusing trade-mark applications on ground that trade-marks were not registerable, where Commissioner was not made a party and was not resident of district, since Commissioner was a "necessary party." 35 U.S.C.A. §§ 145, 146.—*Drackett Co v. Chamberlain Co*, 10 F.Supp. 851, affirmed 81 F.2d 866, appeal dismissed, certiorari denied 57 S.Ct. 16, 299 U.S. 503, 81 L.Ed. 373.—*Trade Reg 233*.

D.Puerto Rico 1998. Subsidiary of corporation potentially liable for explosion in a downtown area as corporation's joint tort-feasor was not a "necessary party" that had to be joined in multiple personal injury actions against corporation. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—*In re Rio Piedras Explosion Litigation*, 179 F.R.D. 59.—*Fed Civ Proc 215*.

D.R.I. 1944. Proprietor of registered copyright, though it had assigned to another exclusive right of public performance for profit, could sue for infringement, and assignee of such right was not a "necessary party" to suit. Copyright Act, § 25, 17 U.S.C.A. § 25.—*Shapiro, Bernstein & Co. v. Widenski*, 54 F.Supp. 780, affirmed 147 F.2d 909.—*Copyr 76, 81*.

W.D.S.C. 1945. Mother of unemancipated minor children living with father and mother in South Carolina was a "real party in interest" and a "necessary party" to action against employer to recover unpaid minimum wages, overtime, liquidated damages, and attorneys' fees under Fair Labor Standards Act. Fed.Rules of Civ.Proc., rule 17(a), 28 U.S.C.A.; Fair Labor Standards Act of 1938, § 16, 29 U.S.C.A. § 216; Code S.C.1942, § 8638.—*Constance v. Gosnell*, 62 F.Supp. 253.—*Fed Civ Proc 140, 220; Mast & S 80(3.1)*.

E.D.S.C. 1942. Where nonresident grantors and a local corporation were bound by the terms of the same warranty of title to realty, local corporation even though it signed as surety only was a "necessary party" to any controversy involving such warranties between grantors and grantee, also a local corporation, so that there could not exist the requisite "diversity of citizenship" warranting removal of such controversy to federal court.—*Nelson v. Camp Mfg. Co.*, 44 F.Supp. 554.—*Rem of C 31*.

D.Virgin Islands 1998. Commercial tenant was "necessary party" in landlord's declaratory relief action against tenant's corporate parent and tenant's insurer, relating to use of insurance proceeds to rebuild the destroyed leased premises, as insurance proceeds were payable in full to tenant and tenant's absence would impede its ability to protect itself against landlord's allegations. Fed.Rules Civ. Proc.Rule 19(a), 28 U.S.C.A.—*H.E. Lockhart Management, Inc. v. National Union Fire Ins. Co.*, 183 F.R.D. 455.—*Decl Judgm 296*.

E.D.Wis. 1997. Local apprenticeship training committee which was listed as co-obligee on scholarship loan agreements signed by participant in apprenticeship job training program was not "necessary party," in action brought by national and local funds that financed cost of participant's training to recover for participant's alleged breach of

scholarship loan agreements, where local committee shared virtually identical interests with local fund that participated in lawsuit as party plaintiff, and where local committee had not attempted to intervene in proceeding or to otherwise manifest its concern that its interests were not adequately represented. Fed.Rules Civ.Proc.Rule 19(b), 28 U.S.C.A.—*Southeastern Sheet Metal Joint Apprenticeship Training Fund v. Barsuli*, 950 F.Supp. 1406.—*Fed Civ Proc 223*.

E.D.Wis. 1939. Where defendants in death action claimed that the workmen's compensation insurer of deceased's employer was a "necessary party" because such insurer would have an interest in the recovery, if any, because the insurer had become liable for compensation, medical, funeral and hospital expenses, federal court rule regarding third party practice was inapplicable since defendant had no claim against the insurer and plaintiff had no claim against insurer except as had been adjudicated by State Industrial Commission. St.Wis.1937, § 102.29(1)(a, b), (2); Fed.Rules Civ.Proc. rule 14, 28 U.S.C.A.—*Slauson v. Standard Oil Co.*, 29 F.Supp. 497.—*Fed Civ Proc 289*.

E.D.Wis. 1939. Where defendants in death action claimed that workmen's compensation insurer of deceased's employer was a "necessary party" and the insurer would be entitled to share in the recovery, if any, from the defendants in the death action, the insurer was directed to be listed as an involuntary plaintiff. St.Wis.1937, § 102.29(1), (a, b), (2); Fed.Rules Civ.Proc. rule 19(a), 28 U.S.C.A.—*Slauson v. Standard Oil Co.*, 29 F.Supp. 497.—*Fed Civ Proc 281; Work Comp 225.1*.

Bkrcty.S.D.Fla. 2000. Alleged conduit that participated in fraudulent transfer of funds from Chapter 11 debtor to alleged direct, mediate or immediate transferees was not "necessary party" in avoidance proceeding brought by trustee; trustee was not seeking to avoid any transfer of funds to alleged conduit and had not alleged that conduit was in possession of any funds that were fraudulently conveyed by debtor, and conduit's presence was not necessary to accord full relief to trustee; to extent that conduit had knowledge of relevant facts, conduit could be called as witness without joining it as party. Bankr.Code, 11 U.S.C.A. §§ 548, 550; Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—*In re Financial Federated Title & Trust, Inc.*, 252 B.R. 840.—*Bankr 2723*.

Bkrcty.D.Md. 2002. Current trustee on deed of trust was not "necessary party" or "indispensable party" on motion by Chapter 13 debtor to strip off junior deed of trust lien, so that, where motion to strip off lien was properly served on bank as holder of deed of trust note and as beneficiary of lien created by deed of trust securing such note, debtor's failure to ascertain identity of most current deed of trust trustee named or substituted by bank, to name that trustee in stripoff motion, and to locate and serve trustee with another copy of stripoff motion identical to that which was served on bank, was not grounds to vacate order avoiding lien. Bankr.Code, 11 U.S.C.A. § 506(d).—*In re Williams*, 277 B.R. 78.—*Bankr 2159.1, 2164.1*.

Bkrty.D.Md. 2002. Co-owner of deed of trust property was "necessary party" on motion by Chapter 13 debtor to strip off junior deed of trust lien, so that where debtor failed to serve copy of her stripoff motion on co-owner, order availing lien had to be set aside under "catchall" provision of Federal Rule of Civil Procedure governing motions for relief from judgment. Bankr.Code, 11 U.S.C.A. § 506(d); Fed.Rules Civ.Proc.Rule 60(b)(6), 28 U.S.C.A.—In re Williams, 277 B.R. 78.—Bankr 2159.1, 2164.1.

Bkrty.D.Mass. 1987. Debtor was "necessary party" in proceeding brought by unsecured creditor alleging fraudulent transfer by debtor of two-thirds interest in property, where debtor retained one-third interest in property and any property recovered would become part of debtor's bankruptcy estate. Rules Bankr.Proc.Rule 7019, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.—In re Herbst, 76 B.R. 882.—Bankr 2159.1.

Bkrty.E.D.Mo. 1993. Debtor was "necessary party" in nonbankruptcy lawsuits scheduled to go to jury trial three days after debtor's Chapter 12 filing, for purpose of determining whether relief should be granted from automatic stay to permit action to proceed; suit sought to collect note of \$300,000 and also included several additional counts for fraudulent conveyances. Bankr.Code, 11 U.S.C.A. § 362(a)(1), (d).—In re Fay, 155 B.R. 1009.—Bankr 2422.5(4.1).

Bkrty.E.D.N.C. 1987. Chapter 7 trustee was "necessary party," in proceeding that was initiated before case was converted to one under Chapter 7 to reform deed of trust executed by debtor.—In re Boardwalk Development Co., Inc., 72 B.R. 152.—Bankr 2159.1.

Bkrty.E.D.Pa. 1988. Corporate debtor's former president was not "necessary party" to claim filed by debtor against attorneys for their alleged malpractice in failing to alert directors to president's alleged irregularities in stock purchase transactions. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.—In re Direct Satellite Communications, Inc., 86 B.R. 390.—Fed Civ Proc 215.

Bkrty.D.Vt. 1998. Debtor's son, as recipient of debtor's alleged fraudulent transfer of homestead property, was "necessary party" to action to avoid transfer as fraudulent conveyance. §9 V.S.A. § 2281.—In re Farrar, 219 B.R. 48.—Fraud Conv 255(4).

Ala. 1947. Where plaintiff, as then record owner of an undivided interest in property by reason of devise under her mother's will, was the one who incurred debt and expended money in making improvements on property without knowledge that mother prior to her death had executed deeds conveying property to plaintiff's sisters and because of that status was entitled to a lien on the property, plaintiff's husband, who became a surety on note given to secure money to make the improvements and who had paid some money to liquidate note, was not a "necessary party" in suit to enforce the lien.—Lee v. Menefield, 31 So.2d 581, 249 Ala. 407.—Improv 4(6).

Ala. 1944. In suit for specific performance of grantee's agreement to reconvey to grantor or her nominee on payment of amount due grantee, where allegations of bill disclosed that grantor was indebted to grantee for certain amount and that she was also liable to mortgagees for payment of balance due on debt secured by mortgages, the grantor was a "necessary party" although she had sold her interest in realty to another.—Cook v. Benton, 18 So.2d 405, 245 Ala. 683.—Spec Perf 106(1).

Ala. 1942. In quo warranto proceedings brought in name of the state on relation of an individual who did not make himself a party thereto, and where no private rights were sought to be protected, proceeding to a final judgment of ouster against defendant without joinder of individual was reversible error, since individual was a "necessary party" and the state a mere "nominal party". Code 1940, Tit. 7, §§ 1136, 1137, 1142; Tit. 55, §§ 229, 244.—Baxter v. State ex rel. Metcalf, 9 So.2d 119, 243 Ala. 120.—App & E 1036(3); Quo W 39.

Ala. 1942. The corporation as such is not a "necessary party" to a proceeding which goes to the validity of the corporation, but the corporation is by statute made a "proper party" to such proceeding. Code 1940, Tit. 7, § 1139.—Carter v. Town of Muscle Shoals, 7 So.2d 74, 242 Ala. 519.—Corp 613(3).

Ala. 1941. Where defendant caused conditional seller to repossess property sold to plaintiff and defendant and resell it to third party, in action against defendant and third party to enforce a trust on the property to extent of plaintiff's interest subject to prior rights of conditional seller, conditional seller was not a "necessary party", since no redemption was sought and conditional seller's superior claim was recognized.—Masters v. Chambers, 4 So.2d 261, 241 Ala. 623.—Trusts 366(1).

Ala. 1941. A "quo warranto proceeding" is a public proceeding in name of the state, a "necessary party", and such a proceeding on relation of an individual, who makes himself also a party, and secures costs of suit, is pursuant to authority conferred by the state, and purpose of such a proceeding is the same as in a proceeding by the state on relation of a public officer designated for the purpose.—Corprew v. Tallapoosa County, 3 So.2d 53, 241 Ala. 492.—Quo W 32, 34.

Ala. 1941. Where complainant, after adopting trade-mark "Dixi-Cola" for a soft drink concentrate manufactured by complainant, sold complainant's business and trade-mark to a third party who conveyed trade-mark and business to a corporation, and complainant, by contract with third party, reserved to himself an exclusive right as agent to sell concentrate in certain territory, and complainant thereafter entered into contract with defendant giving defendant exclusive right to use concentrate and trade-mark, corporation was not a "necessary party" to suit against defendant for injunction against unfair competition and infringement of trade-mark, notwithstanding that complainant sought an accounting, and bringing of suit did not result in "splitting a cause of action".—Try-Me Bottling Co.

v. Teaver, 2 So.2d 611, 241 Ala. 266.—Action 53(1); Trade Reg 91, 546.

Ala. 1941. In suit to enforce collection of indebtedness due under lease sale contract, transferred with purchase-money notes secured thereby to complainant by one who purchased such instruments at liquidation sale of bank's assets, corporation doing business as such bank was "necessary party" in order to divest legal title to lots covered by contract out of such corporation and vest it in complainant, if balance due was not paid within time fixed by court decree, so that court erred in overruling demurrer to bill on ground of failure to make such corporation party to suit.—Horton v. Martin, 2 So.2d 452, 241 Ala. 264.—Ven & Pur 299(1).

Ala. 1941. Where guardian, on advice of bank trust officers, with incompetent's funds derived from war risk insurance benefits and disability compensation benefits purchased from bank notes, and incompetent by his guardian and next friend sought to rescind purchase and to hold bank as constructive trustee, on ground that notes were prohibited securities, guardian was a "necessary party", since suit involved no property right of incompetent but was merely to recover from constructive trustee an indebtedness to recover which guardian alone had power and duty to maintain action at law for money had and received, and nature of invested funds was immaterial. Code 1923, §§ 5689, 5707, 8149; Const.1901, § 74.—Spann v. First Nat. Bank of Montgomery, 200 So. 554, 240 Ala. 539.—Mental H 481.1.

Ala. 1940. Purchaser at register's sale was "necessary party" to appeal which sought review of decree confirming the sale and overruling exceptions to the report of the sale.—Pfingstl v. Solomon, 197 So. 12, 240 Ala. 58.—App & E 327(7).

Ala. 1940. In mortgagor's action to redeem land from mortgage given by the mortgagor and his wife, wherein amount necessary for redemption was sought to be controlled by an agreement of accord, the wife was not a "necessary party" even though she signed the mortgage as co-owner of the land and as codebtor and not merely as the mortgagor's wife.—Phillips v. Harvey, 196 So. 498, 239 Ala. 605.—Mtg 615.

Ala. 1940. In suit by administrator of insolvent estate to have constructive trust declared in decedent's land, which widow had acquired under tax sale, wherein bill alleged that widow had quitclaimed to her son, who was made a party, widow was not a "necessary party".—Batson v. Etheridge, 195 So. 873, 239 Ala. 535.—Trusts 366(1).

Ala. 1940. On appeal from order confirming sale in suit in equity for sale of realty for division among cotenants, successful bidder was a "necessary party".—Spence v. Spence, 195 So. 717, 239 Ala. 480.—App & E 327(7).

Ala. 1940. The city of Bessemer was a "necessary party" to landowner's appeal from circuit court's order dismissing landowner's petition for issuance of common-law writ of certiorari to review

and quash proceeding and judgment of probate court in an ad quod damnum proceeding instituted by city to acquire a right of way by condemnation, and Supreme Court did not have jurisdiction to review circuit court's order where the only parties to appeal were landowner and an individual, as judge of probate.—Wilkes v. Hawkins, 195 So. 446, 240 Ala. 85.—Cert 70(3.5).

Ala. 1940. In suit to set aside conveyance by debtor and for discovery of concealed assets, a minor who was the judgment plaintiff was a "necessary party." Code 1932, § 7343.—Hays v. McCarty, 195 So. 241, 239 Ala. 400.—Infants 75.

Ala. 1940. Mortgagee by which mortgaged premises were purchased at foreclosure sale, as owner of legal title and of an equitable interest therein as security for purchase money due from its vendees, was a "necessary party" to suit by mortgagor for statutory redemption from the foreclosure. Code 1923, § 10145, subd. 4.—Garrett v. Federal Land Bank of New Orleans, 194 So. 530, 239 Ala. 191.—Mtg 615.

Ala. 1940. Where complainant's father acted as complainant's agent in procuring loan from defendant, the father was not a "necessary party" to complainant's suit to have a conveyance executed to defendant declared a mortgage and to permit complainant to redeem.—Andress v. Parish, 193 So. 727, 239 Ala. 67.—Mtg 608.5.

Ala. 1939. A person who had no interest in mortgaged property or suit to foreclose, having disposed of any rights he had acquired from the mortgagors, was not a "necessary party" to the foreclosure suit.—Abbott v. Southern Cotton Oil Co., 188 So. 68, 237 Ala. 569.—Mtg 427(4).

Ala. 1939. In a suit to reform and foreclose a mortgage, the mortgagee, though he was assigned the mortgage, is a "necessary party" unless his assignment conveyed the legal title, and is a "proper party" if it did.—Hester v. First Nat. Bank, 186 So. 717, 237 Ala. 307.—Mtg 426, 427(2); Ref of Inst 33.

Ala. 1938. A minor was a "proper party," if not a "necessary party," to suit to foreclose mortgage given to minor's former guardian.—McNeal v. Patterson, 180 So. 773, 236 Ala. 50.—Guard & W 126.

Ala. 1938. In suit to cancel a contract in which an insurance company agreed to pay incumbrances on realty therein described in consideration for complainant's conveyance thereof to company subject to a three-year period of redemption, during which complainant was to be entitled to occupy the premises as tenant, the company was a "necessary party".—Walker v. Harris, 179 So. 213, 235 Ala. 384.—Can of Inst 35(3).

Ala. 1937. Where a husband devised to his wife mortgaged land which had been conveyed to husband and wife, and wife assigned her right of redemption, wife was a "necessary party," in assignees' suit to redeem, in her own right and as to her interest acquired by devise from her husband.—Crawford v. Horton, 175 So. 310, 234 Ala. 439.—Mtg 615.

Ala. 1936. Prior mortgagee *held* not a “necessary party” to suit for redemption against second mortgagee.—*Lytle v. Robertson*, 170 So. 484, 233 Ala. 161.—Mtg 615.

Ala. 1933. Venue of creditor’s suit to subject partner’s share, alleged to have been fraudulently conveyed, to sale for personal debt, could not be laid in a county merely because one partner lived there, where he had not participated in any wrongdoing, since he was not a “necessary party” (Code 1923, §§ 6524, 7342).—*First Nat. Bank v. Johnson*, 148 So. 745, 227 Ala. 40.—Venue 22(7.1).

Ala. 1933. In taxpayers’ suit to enjoin state treasurer from paying outstanding warrants with school funds for current year, holder thereof *held* “necessary party” (Chancery Practice Rule 18).—*Turnipseed v. Blan*, 148 So. 116, 226 Ala. 549.—States 168.5.

Ala. 1928. Mortgagor who parted with all title to purchasers who assumed mortgage debt was not “necessary party” to foreclosure suit.—*Thompson v. Menefee*, 118 So. 587, 218 Ala. 332.—Mtg 427(1).

Ariz. 1944. Where four notes for \$500 were assigned to plaintiff upon his payment of \$1,100 pursuant to an agreement whereby he was to pay an additional \$700 when suit on notes was settled, even if plaintiff’s assignor retained an interest in the notes, he was not a “necessary party” to action thereon. Code 1939, § 21–501 (A.R.S. Rules of Civil Procedure, rule 17(a)).—*Segar v. Bailey*, 154 P.2d 520, 62 Ariz. 93.—Bills & N 456.

Ariz. 1940. Wife alone was entitled to bring an action for loss of consortium as result of defendants’ selling intoxicating liquor to husband with full knowledge that husband was an habitual drunkard, and husband was neither a “necessary party” nor a “proper party”, regardless of whether damages when recovered would become community property. Rev.Code 1928, §§ 2172, 3729 (A.R.S. §§ 25–211, 44–144).—*Pratt v. Daly*, 104 P.2d 147, 55 Ariz. 535, 130 A.L.R. 341.—Hus & W 209(4), 270(5).

Ariz. 1940. A wife was not a “necessary party” to an action to enforce an obligation contracted by husband in interest of community and enforceable against community assets.—*Bristol v. Moser*, 99 P.2d 706, 55 Ariz. 185.—Hus & W 270(5).

Ariz. 1938. In interpleader action to determine which of several claimants was entitled to payment of note and mortgage, a claimant who had disposed of all interest he may have acquired in note and mortgage had no further interest in the proceeding and was not a “necessary party” to an appeal. Rev.Code 1928, § 4327. (A.R.S. Rules of Civil Procedure, rule 22(b)).—*Hill v. Favour*, 84 P.2d 575, 52 Ariz. 561.—App & E 330(1).

Ariz. 1938. In materialman’s action on contractors’ bond, surety on bond was not “necessary party” to contractor’s appeal on which judgment against contractor was modified, since surety was liable only in case of and to the extent that contractor was liable, and hence modification of judgment as to contractor was modification as to the surety,

notwithstanding that the surety was not a party to the appeal. Rev.Code 1928, § 2605 (A.R.S. § 34–221).—*Webb v. Crane Co.*, 80 P.2d 698, 52 Ariz. 299.—App & E 327(7).

Ariz. 1938. In materialman’s action on contractors’ bond for materials furnished subcontractor, the subcontractor was not a “necessary party” to contractor’s appeal on which judgment against contractor was modified to extent of payment made by subcontractor to materialman from funds received by contractor and which had been credited by materialman on subcontractor’s open account, since subcontractor received benefit of payments, and his account with materialman remained satisfied to such extent, and modification of judgment as to contractor did not affect liability of subcontractor to materialman for balance of his accounts. Rev. Code 1928, § 2605 (A.R.S. § 34–221).—*Webb v. Crane Co.*, 80 P.2d 698, 52 Ariz. 299.—App & E 327(7).

Ariz. 1938. A party having an interest in opposing the object sought to be accomplished by an appeal is a “necessary party” to the appeal.—*Moshier v. Young*, 75 P.2d 1037, 51 Ariz. 263.—App & E 327(2).

Ariz. 1938. On appeal by mortgagor from judgment of foreclosure allowing holder of a tax certificate first lien upon mortgaged property, holder of tax certificate had interest in opposing appeal, and was a “necessary party” to the appeal.—*Moshier v. Young*, 75 P.2d 1037, 51 Ariz. 263.—Mtg 573.

Ariz. 1938. Under statutes governing right of intervention and defining necessary parties in suits for declaratory relief, in suit by city for declaratory judgment as to validity of contract with individual defendant for collection and disposal of garbage, third party who had contract with defendant to organize corporation to dispose of garbage was not a “person who has an interest in the subject-matter of the action which can be affected by the judgment” or a “necessary party” entitled to intervene or to be made a defendant, the “subject matter” of the suit being the validity of the contract, and not the garbage. Rev.Code 1928, §§ 3793, 4390 (A.R.S. § 12–1841).—*Miller v. City of Phoenix*, 75 P.2d 1033, 51 Ariz. 254.—Decl Judgm 306.

Ariz.App. Div. 2 1985. “Necessary party,” without whom appeal should be dismissed, is party to record below who is directly affected by ruling on merits of appeal and who should be made party to appeal to prevent piecemeal litigation.—*Golembieski v. O’Rielly R.V. Center, Inc.*, 708 P.2d 1325, 147 Ariz. 134.—App & E 322, 327(2).

Ark. 1946. Holder of mortgage which had been recorded prior to contract of sale was a “necessary party” to vendor’s action to have all payments under the contract declared due on account of purchaser’s default and to have land sold in satisfaction of his judgment, and in absence of mortgage holder the equities of the parties could not be adjudged.—*Rodgers v. Vaughn*, 193 S.W.2d 652, 209 Ark. 917, 164 A.L.R. 1041.—Ven & Pur 313.

Ark. 1944. Decedent's administrator was "necessary party" to suit for specific performance of decedent's alleged oral contract to leave plaintiff all decedent's real and personal property for plaintiff's services where administrator claimed right of possession of realty to pay estate debts, hence, plaintiff's testimony as to transactions and conversations with decedent were incompetent to establish the contract. Pope's Dig. §§ 66, 5154.—Jensen v. Housley, 182 S.W.2d 758, 207 Ark. 742.—Witn 129.

Ark. 1940. The express desires of a testator are declared in his will, and it is the executor's duty to enforce its provisions, and in doing so he is a trustee of an express trust and a "necessary party" to any contest of validity of the will, particularly after having qualified and received property into his custody or possession.—Quinn v. Driver, 136 S.W.2d 1015, 199 Ark. 1058.—Ex & Ad 439.

Ark. 1939. The wife of deceased mortgagors' son inheriting an interest in mortgaged homestead was not a "necessary party" to suit to foreclose mortgage, where marriage was not consummated until nearly one month after filing of foreclosure suit and lis pendens notice.—Federal Land Bank of St. Louis v. Cottrell, 126 S.W.2d 279, 197 Ark. 783.—Home 115(3).

Ark. 1937. In suit by stockholders to recover portion of salaries paid to directors on theory that increase in salaries was illegal, corporation was a "necessary party," because, if salaries had been wrongfully paid and recovery was had, it would be the property of the corporation.—Cook v. Malvern Brick & Tile Co., 109 S.W.2d 451, 194 Ark. 759.—Corp 320(4).

Ark. 1934. Trustee under deed of trust executed after affidavit for mechanic's lien had been filed held not "necessary party" to action to foreclose mechanic's lien, since lien of deed of trust was inferior to mechanic's lien, and trustee had equity of redemption although not made party.—Arkansas Foundry Co. v. American Portland Cement Co., 75 S.W.2d 387, 189 Ark. 779.—Mech Liens 263(7).

Ark. 1933. In proceeding to review sufficiency of referendum petition, secretary of state is "necessary party," since he has duty of certifying ballot title to election officials, performance of which duty may be enjoined on determination that ballot title is sufficient. Const.Amend. No. 7.—Shepard v. McDonald, 64 S.W.2d 559, 188 Ark. 124.—Statut 355.

Cal. 1949. A "necessary party" is one so interested in the controversy that he should normally be joined in the litigation in order to enable the court to do complete justice, and, when his presence in suit can be obtained, it is improper for court to attempt to adjudicate his rights without effecting his joinder therein.—McClure, on Behalf of Caruthers v. Donovan, 205 P.2d 17, 33 Cal.2d 717.—Parties 18, 29.

Cal. 1944. Where Unemployment Act authorized Employment Commission to appoint Director of Department of Employment to perform duties required under Civil Service Act, director was the only "necessary party" to proceeding to compel

reinstatement of Chief of Division of State Employment Agencies as directed by State Personnel Board, and it was unnecessary for Employment Commission to be made a party. Gen.Laws, Act 1404, § 234 (repealed. See Govt.Code, § 18572); Act 8780d, § 88.—Stockton v. Department of Employment, 153 P.2d 741, 25 Cal.2d 264.—Mand 151(2).

Cal. 1942. Corporation was "necessary party" to action by one director against certain other directors to remove defendant directors from office and as such party corporation could appeal from judgment rendered, although its rights were not specifically determined by that judgment. Civ. Code, § 310 (See Corporations Code, §§ 807, 810, 811).—De Garmo v. Goldman, 123 P.2d 1, 19 Cal.2d 755.—App & E 138.

Cal. 1941. A married woman has a separate right to bring an action in her own name for injuries to her person and she is a "necessary party" to that action, though her husband may join her therein.—Sanderson v. Niemann, 110 P.2d 1025, 17 Cal.2d 563.—Hus & W 270(1).

Cal. 1941. Wife was not a "necessary party" to action in small claims court for damages to community-owned automobile and for financial loss to community from wife's injuries but where no objection was made to her joinder therein, complaint thereof could not be made on appeal from judgment in wife's separate action for injuries, particularly where cause of action for wife's injuries was not tendered as an issue in the small claims court.—Sanderson v. Niemann, 110 P.2d 1025, 17 Cal.2d 563.—Judgm 502.

Cal. 1941. Where recovery from automobile owner for injuries caused by negligence of driver was sought on theory of respondeat superior, driver was not a "necessary party". West's Ann.Vehicle Code §§ 17150-17157; St.1937, p. 2353.—Sanderson v. Niemann, 110 P.2d 1025, 17 Cal.2d 563.—Autos 234.

Cal. 1940. In action to impose constructive trust upon property in hands of distributees of a decedent's estate on ground of decedent's breach of contract to make will disposing of the property in certain manner, each of the distributees is a "necessary party" and the court will generally order each distributee served and brought in unless there is some good reason for not doing so, but the distributees are not "indispensable parties" who are necessary in order that a valid judgment may be entered. Code Civ.Proc. § 389.—Bank of California Nat. Ass'n v. Superior Court in and for City and County of San Francisco, 106 P.2d 879, 16 Cal.2d 516.—Trusts 366(1).

Cal. 1933. Partner's action for dissolution of partnership, accounting, and for injunction to prevent copartner from disposing and city from paying moneys due partnership under improvement contract held maintainable in county where city was resident, though copartner was nonresident, since city was "necessary party." Code Civ.Proc. §§ 379-379b, 395, 1184.—Freeman v. Dowling, 25 P.2d 980, 219 Cal. 213.—Venue 22(9).

Cal.App. 1 Dist. 1975. Son of decedent was "necessary party" to wrongful death action brought by widow and other children of decedent. West's Ann.Code Civ.Proc. § 389.—*Sanders v. Fuller*, 119 Cal.Rptr. 902, 45 Cal.App.3d 994.—Death 42.

Cal.App. 1 Dist. 1958. In action for injunctive relief to restrain grading operations which caused water to flow from realty of defendant onto realty of plaintiffs, trial court did not err in striking defendant's cross-complaint against city, on ground that city was not a "necessary party", where city owned no easement between realty of defendant and realty of plaintiffs, and defendant's realty lay between realty of plaintiffs and city's realty, and there was no evidence to support defendant's contention that defective city sewer caused damage to realty of plaintiffs. West's Ann.Code Civ.proc. § 442.—*Sturges v. Charles L. Harney, Inc.*, 331 P.2d 1072, 165 Cal.App.2d 306.—Plead 149.

Cal.App. 1 Dist. 1950. In suit against alleged owner of motor vehicle for injuries sustained in collision therewith, operator of vehicle was a "proper party", but not a "necessary party", or "indispensable party". West's Ann.Vehicle Code, §§ 17152–17154.—*Harrington v. Evans*, 221 P.2d 696, 99 Cal.App.2d 269.—Autos 234.

Cal.App. 1 Dist. 1946. Where defendants in action to recover price of meat delivered filed a cross-complaint charging plaintiff and a third party with conspiracy to defraud on weight of meat delivered, third person who allegedly conspired with plaintiff was properly brought into proceedings on defendants' motion as a "necessary party". Code Civ. Proc. § 389.—*Casaretto v. DeLucchi*, 174 P.2d 328, 76 Cal.App.2d 800.—Parties 51(4).

Cal.App. 1 Dist. 1943. In action for dissolution of partnership operating hotel in county of defendant partner's residence outside county of venue, wherein codefendant bank, sought to be restrained pendente lite from paying over partnership funds deposited therewith, was domiciled, such bank was not "necessary party", so that its joinder did not deprive defendant partner of right to change of place of trial to county of his residence, in absence of allegation that bank had or claimed any interest in such funds. Code Civ.Proc. §§ 392, 395.—*Hays v. Cowles*, 141 P.2d 26, 60 Cal.App.2d 514.—Venue 22(6).

Cal.App. 1 Dist. 1942. Corporation is not a "necessary party" to an action between rival claimants to determine ownership of shares of stock in the corporation.—*Perkins v. Benguet Consol. Min. Co.*, 132 P.2d 70, 55 Cal.App.2d 720, certiorari denied 63 S.Ct. 1435, 319 U.S. 774, 87 L.Ed. 1721, rehearing denied 64 S.Ct. 429, 320 U.S. 803, 88 L.Ed. 485.

Cal.App. 1 Dist. 1942. In creditor's proceedings supplementary to execution levied on interest of beneficiary of a spendthrift trust and involving issue of how much money was reasonably necessary for support of the beneficiary, where trustee was bound to pay beneficiary entire nine-tenths less \$100 of income from trust, the creditor's rights were not affected by not having trustee brought in as a party,

as against contention that trustee was a "necessary party" or "indispensable party". Code Civ.Proc. § 714 et seq.—*Smith v. Smith*, 124 P.2d 117, 51 Cal.App.2d 29.—App & E 1036(3).

Cal.App. 1 Dist. 1941. Where a corporation which was not specifically named as defendant in complaint in condemnation proceedings, although sued under a fictitious name, was not served with summons but filed an answer over five years after commencement of proceedings seeking affirmative relief in damages, and, if allegations of answer were true, a judgment for plaintiff would have affected rights of corporation, and plaintiff acquiesced in appearance of corporation, the corporation was a "necessary party" and "indispensable party" to proceedings and could not demand that proceedings be dismissed for failure to bring them to trial within five years after filing of complaint. West's Ann. Code Civ.Proc. §§ 389, 583, 1246, 1250.—*Bayle-Lacoste & Co. v. Superior Court of Alameda County*, 116 P.2d 458, 46 Cal.App.2d 636.

Cal.App. 1 Dist. 1940. In an action to set aside a fraudulent conveyance, there must be a defendant competent to defend, and one against whom a judgment may be rendered, but the fraudulent grantor who has reserved no interest, legal or equitable, in the conveyance, although a "proper party" is not a "necessary party", since the conveyance is binding as to the grantor and is not affected by his death.—*Liuzza v. Bell*, 104 P.2d 1095, 40 Cal. App.2d 417.—Fraud Conv 255(3).

Cal.App. 1 Dist. 1937. In action on theft policy covering truck, brought by assignee of conditional sales contract, conditional buyer who was a named insured held "necessary party".—*C.I.T. Corp. v. American Central Ins. Co.*, 64 P.2d 742, 18 Cal. App.2d 673.—Insurance 3567.

Cal.App. 2 Dist. 1942. A corporation was "necessary party" to action by its president, who owned third of its stock, as director thereof, to remove, and recover damages in corporation's behalf from two other directors, who were its vice president and secretary and owned remaining stock. Civ.Code, § 310 (repealed 1947. See Corporations Code, §§ 807, 810, 811).—*Sattinger v. Golden State Glass Corp.*, 127 P.2d 653, 53 Cal.App.2d 130.—Corp 320(4).

Cal.App. 2 Dist. 1941. If setting aside default judgment as to defendant on ground that defendant was not served with summons gave defendant a right to attack judgment on merits exonerating codefendant from liability, so far as plaintiffs were concerned, by a motion for new trial by plaintiffs against codefendant, codefendant was a "necessary party" to defendant's motion to set aside default judgment and was entitled to notice of motion and opportunity to resist it, and, where no notice of motion was given codefendant, trial court was without jurisdiction to set aside default judgment, so far as codefendant was affected thereby. Vehicle Code, § 402, St.1935, p. 153; Code Civ.Proc. §§ 473, 473a.—*Washko v. Stewart*, 112 P.2d 306, 44 Cal.App.2d 311.—Judgm 155.

Cal.App. 2 Dist. 1937. The minor child of divorced parents was a "necessary party" to an action by mother against father on a series of notes wherein father alleged an oral trust in favor of minor child, where partial purpose of action was to determine rights of mother, as trustee, and child, as beneficiary. Code Civ.Proc. §§ 369, 389.—*De Olazabal v. Mix*, 74 P.2d 787, 24 Cal.App.2d 258.—Trusts 257.

Cal.App. 2 Dist. 1935. Gas and electric corporation held not a "necessary party" to action for negligence in letting city's and corporation's high-power electric lines drop and come in contact with power lines furnishing electricity to plaintiff, thereby causing a fire. Code Civ.Proc. § 389.—*Fisch & Co. v. Superior Court in and for Los Angeles County*, 43 P.2d 855, 6 Cal.App.2d 21.—Electricity 19(1).

Cal.App. 3 Dist. 1943. On petition to vacate orders declaring minor grandchildren to be wards of juvenile court, grandmother's mere statement that children were in her custody was of no value as against allegation and presumed proof before juvenile court that children's custody was in their mother, and therefore grandmother was not a "necessary party" upon whom service of citation was a jurisdictional prerequisite to the orders and grandmother was not a "person having an interest in the proceeding" entitled to attack them. St.1937, pp. 1032, 1037 (West's Ann.Welfare & Inst.Code) §§ 701, 735; St.1939, p. 3027 (West's Ann.Welfare & Inst.Code) § 700(c).—*People ex rel. Pollock v. Bogart*, 138 P.2d 360, 58 Cal.App.2d 831.—Infants 200.

Cal.App. 3 Dist. 1941. The statute of limitations is deemed to run against a mechanic's lienholder only while he may with exercise of due diligence institute proceeding of his own volition, and when consent of bankruptcy court is a necessary prerequisite for maintenance of action in state court to foreclose the lien, statute should be tolled until consent can be procured after the appointment of bankruptcy trustee who becomes a "necessary party" to the application for permission to maintain action in state court. Bankr.Act, § 2, 11 U.S.C.A. § 11.—*Wells v. California Tomato Juice*, 118 P.2d 916, 47 Cal.App.2d 634.—Lim of Act 110.

Cal.App. 3 Dist. 1938. Where mortgagor's wife did not join husband in executing note and mortgage but recorded homestead prior to foreclosure proceedings, mortgagor's wife was a "necessary party" in foreclosure proceeding, since her homestead became cloud on title, subject to the prior lien of the mortgage, which was necessary and proper to remove so as to authorize a valid sale of the premises to satisfy the judgment for mortgage indebtedness. Civ.Code, § 1241(4).—*Winn v. Torr*, 81 P.2d 457, 27 Cal.App.2d 623.—Mtg 427(1).

Cal.App. 3 Dist. 1935. State of California held not "necessary party" defendant in action for damages for transfer of sand from ocean beach to border of adjoining land by constructing groin.—*Katenkamp v. Union Realty Co.*, 53 P.2d 387, 11 Cal.App.2d 63.—Nav Wat 41(1).

Cal.App. 4 Dist. 1997. Indian tribe was proper party to be joined in suit by state challenging authority of redevelopment agency to enter into casino development agreement with tribe, and it was therefore a "necessary party." West's Ann.Cal. C.C.P. § 389(a).—*People ex rel. Lungren v. Community Redevelopment Agency*, 65 Cal.Rptr.2d 786, 56 Cal.App.4th 868, review denied.—Indians 27(5).

Cal.App. 4 Dist. 1946. A wife is in privity with her husband as to her interest in their community property, so that husband, as party to action involving such property, fully represents both spouses' interest and wife is not a "necessary party".—*Yearout v. American Pipe & Steel Corp.*, 168 P.2d 174, 74 Cal.App.2d 139.—Hus & W 270(5).

Cal.App. 4 Dist. 1946. A wife was not "necessary party" to action against husband to foreclose materialman's lien on community property, so that judgment foreclosing lien was binding on her and neither spouse could maintain action to quiet title to half interest in such property after foreclosure sale thereof to materialman.—*Yearout v. American Pipe & Steel Corp.*, 168 P.2d 174, 74 Cal.App.2d 139.—Hus & W 270(5); Judgm 693.

Cal.App. 4 Dist. 1941. Generally, a mortgagor who has not disposed of his interest in mortgaged premises is a "necessary party" to a suit for foreclosure and sale, even though no personal claim is asserted against him, but if mortgagor has transferred his interest in property to others and has no interest in or lien or claim upon property or demand secured, mortgagor is a "proper party" but not a necessary party, in foreclosure suit, unless mortgagee wishes a decree over against him for residue.—*Johnson v. Home Owners' Loan Corp.*, 116 P.2d 167, 46 Cal.App.2d 546.—Mtg 427(1), 435.

Cal.App. 4 Dist. 1941. Where mortgagor, after delivering mortgage on land to mortgagee, executed a grant deed of land to a third party to secure a bail bond, and deed, although intended as a mortgage, was absolute on its face and was recorded before commencement of suit to foreclose mortgage, and mortgagee in foreclosure proceedings did not seek a deficiency judgment against mortgagor, the mortgagor was not a "necessary party" to foreclosure suit unless he retained some interest in or lien or claim upon property or demand secured, and mortgagee had actual notice thereof.—*Johnson v. Home Owners' Loan Corp.*, 116 P.2d 167, 46 Cal.App.2d 546.—Mtg 427(1).

Cal.App. 4 Dist. 1941. A grantee of a mortgagor stands in mortgagor's shoes, and a grantee whose deed is duly recorded is a "necessary party", that is, he must be made a party to a suit to foreclose mortgage in order to affect his interest, even though he takes subject to mortgage, and without grantee's presence as party defendant to foreclosure suit, a decree of foreclosure of lien by a sale of his property would be a nullity.—*Johnson v. Home Owners' Loan Corp.*, 116 P.2d 167, 46 Cal.App.2d 546.—Mtg 427(4).

Colo. 1964. Statutory requirement that principal contractors shall be made parties to actions to enforce mechanics' liens does not apply when con-

tract amount is greater than \$500 and the contract is not recorded; when this is the case the principal contractor is "proper party" but not a "necessary party," and the action is sufficient without him. C.R.S. '53, 86-3-15.—*Bulow v. Ward Terry & Co.*, 396 P.2d 232, 155 Colo. 560.—*Mech Liens* 263(9).

Colo. 1940. Where lessor assigned lease as collateral for a loan, assignee was a "necessary party" in an action for rent, since no judgment properly could be entered cutting off assignee's right to sue for rent when due unless it were made a party, and to avoid a multiplicity of suits lessee was entitled to have all necessary parties before the court.—*Serv-U's Chain Stores v. Arden Realty & Investment Co.*, 105 P.2d 850, 106 Colo. 369.—*Land & Ten* 228.

Colo. 1937. Where state had paid full value for school district bonds issued to represent consent judgment against school district on unpaid warrants, and reimbursement of state depended on continued existence of judgment which was not void, state held "necessary party" to proceeding by taxpayers to vacate judgment and permit appearance and defense of suit on unpaid warrants. C.L. § 5967.—*Atchison, T. & S. F. Ry. Co. v. School Dist. No. 2 of Fremont County*, 66 P.2d 541, 100 Colo. 148.—*States* 203.

Conn. 1971. General contractor was not a "necessary party" to subcontractor's action against owner to foreclose mechanic's lien where amount due general contractor was not in issue.—*Jones Destruction, Inc. v. Upjohn*, 286 A.2d 308, 161 Conn. 191.—*Mech Liens* 263(9).

Conn. 1950. Where effect of sustaining appeal from action of town council in changing classification of lot from residential to business zone in residential area over opposition of numerous property owners and residents in the neighborhood would be to deprive owner of lot who secured change in classification of his lot of right which had been granted to him by council, he was a "necessary party" to the proceeding, and before judgment could be entered sustaining the appeal, trial court should cause him to be submitted into the case as a party and he should be given opportunity to be heard.—*Kuehne v. Town Council of Town of East Hartford*, 72 A.2d 474, 136 Conn. 452.—*Zoning* 583.

Conn. 1946. In town's action for declaratory judgment as to defendant's right to sell alcoholic liquor under restaurant beer permit issued by Liquor Control Commission, the commission is a "proper party" but is not a "necessary party". Gen.St.Supp.1945, §§ 617h(a), 623h(2).—*Town of Newington v. Mazzocchi*, 48 A.2d 729, 133 Conn. 146.—*Decl Judgm* 294.

Conn. 1942. The Commissioner of Labor was not the sole "necessary party" to action by corporation for declaratory judgment as to whether woman holding offices of president, treasurer and general manager of the corporation was on account of operation of corporation's store an "employee" within meaning of statute fixing maximum hours of employment for women in mercantile establishments. Gen.St.Supp.1939, § 1318e.—*Swiss Clean-*

ers v. Danaher, 27 A.2d 806, 129 Conn. 338.—*Decl Judgm* 294.

Conn. 1941. The town is not a "necessary party" to bastardy proceeding instituted by mother of the child. Gen.St.1930, §§ 5869, 5871.—*White v. Keilty*, 22 A.2d 775, 128 Conn. 313.—*Child* 30.

Conn. 1940. In action on fire policy and for reformation of policy in which allegedly by fraud or mistake both plaintiff and her husband were named as insured, plaintiff could not prove that contract by mutual mistake did not represent intent of parties and recover damages based on contract which was actually made in disregard of its mistaken form, where husband was a "necessary party" to adjudication that there was such a mistake.—*Brunetto v. Royal Exchange Assur. Co.*, 13 A.2d 138, 126 Conn. 569.—*Ref of Inst* 33.

Conn.App. 1996. For purposes of intervention as of right, "necessary party" is one having interest in controversy, who ought to be made party, so that court may finally determine entire controversy, and do complete justice, by adjusting all rights involved in it. C.G.S.A. § 52-102.—*Washington Trust Co. v. Smith*, 680 A.2d 988, 42 Conn.App. 330, certification granted in part 682 A.2d 1014, 239 Conn. 919, certification granted in part 682 A.2d 1015, 239 Conn. 919, reversed 699 A.2d 73, 241 Conn. 734.—*Parties* 40(2).

Del.Ch. 2000. Corporation's chief competitor was not "necessary party" to minority shareholders' action challenging management and shared services agreements between corporation and its chief competitor, which was in bankruptcy and which was controlled by the corporation's majority shareholder; bankruptcy court had granted plaintiffs relief from the automatic stay, and competitor's interests were forcefully represented by corporation's majority shareholder.—*T. Rowe Price Recovery Fund, L.P. v. Rubin*, 770 A.2d 536.—*Corp* 190, 320(4).

Del.Super. 1992. Public Service Commission (PSC) was "necessary party" in appeal from decision in which PSC revisited basis behind its initial rate ruling enabling regulated utilities to charge advances and "gross up" charges on advances for potentially due income tax. Superior Court Civil Rule 19(a), Del.C.App.—*Liborio II, L.P. v. Artesian Water Co., Inc.*, 621 A.2d 800.—*Waters* 203(6).

Del.Super. 1941. A general contractor was a "necessary party" defendant to a suit by subcontractor against owner to enforce a mechanic's lien, since no "privity of contract" existed between owner and subcontractor and the final determination of subcontractor's claim would be an adjudication of owner's right under statute to withhold from general contractor an amount due under original contract sufficient to discharge subcontractor's lien. Rev. Code 1935, § 3324 et seq.—*Westinghouse Elec. Supply Co. v. Franklin Institute of State of Pennsylvania for Promotion of Mechanic Arts*, 21 A.2d 204, 41 Del. 319, 2 Terry 319.—*Mech Liens* 263(9).

Fla. 1942. Where it is sought to have an adjudication that property held by one prima facie in his own right is in fact held in trust for another, the

trustee is a "necessary party" to the suit.—*Huttig v. Huffman*, 9 So.2d 506, 151 Fla. 166.—*Trusts* 366(1).

Fla. 1942. A former clerk of the circuit court, individually, was not a "necessary party" to suit by purchaser of tax certificates against the then clerk of the circuit court for an accounting with respect to the amount expended by purchaser for fees and costs necessary to purchase certificates and, at the request of former clerk, paid directly to special county attorney, which should have been collected from one seeking to redeem tax certificates and paid to purchaser prior to cancellation of the certificates.—*Pent v. Forest Hills Holding Corp.*, 5 So.2d 873, 152 Fla. 190.—*Tax* 742.

Fla. 1941. Where appeal from final decree, in suit to foreclose a lien evidenced by tax sale certificate on realty, was taken after confirmation of master's sale, purchaser at master's sale of realty was a "necessary party".—*Miami Bank & Trust Co. v. Rademacher Co.*, 5 So.2d 63, 149 Fla. 24.—*App & E* 327(11).

Fla. 1940. The state or state comptroller is not a "necessary party" to mortgage foreclosure suit, although it is alleged and admitted that complainant is in default in payment of intangible tax upon security sought to be enforced.—*Powell v. New York Life Ins. Co.*, 194 So. 232, 141 Fla. 758.—*States* 203.

Fla. 1940. A first or senior mortgagee is not a "necessary party" or "proper party" to foreclosure proceedings by a second or junior mortgagee.—*Cone Bros. Const. Co. v. Moore*, 193 So. 288, 141 Fla. 420.—*Mtg* 426, 427(4).

Fla. 1938. On an appeal from a decree holding void a state tax certificate, the record owner of land described in the certificate was a "necessary party" and the Supreme Court, in absence of the record owner, was without authority to pass upon the legal merits of the tax certificate.—*Brown v. City of Palatka*, 181 So. 529, 132 Fla. 260.—*App & E* 327(7).

Fla. 1938. Under statute providing that, whenever a party shall make and file affidavit stating that he fears he will not receive fair trial on account of prejudice of judge, another judge shall be designated to try cause, the state is authorized to file affidavit suggesting disqualification of trial judge in criminal case on ground of prejudice, since statute is available to any party, and state is "necessary party" to criminal proceeding. F.S.A. § 38.10.—*State ex rel. Brown v. Dewell*, 179 So. 695, 131 Fla. 566, 115 A.L.R. 857.—*Judges* 51(1).

Fla. 1936. Treasurer-comptroller of city of Eau Gallie, whose statutory duties are essential to making of budget for approval by council, held "necessary party" to mandamus proceeding to compel city council to make budget and levy tax sufficient to pay relator's claim. Sp.Acts 1931, c. 15195, §§ 43, 44, 47.—*City of Eau Gallie v. State ex rel. Evans*, 169 So. 730, 125 Fla. 277.—*Mand* 151(2).

Fla. 1935. Where board of county commissioners placed funds derived from tax levy to pay county bonds in bank in trust to be prorated among bond-

holders when refunding of bond issue was accomplished, bank was a "necessary party" to bondholder's mandamus proceeding to enforce payment from such funds. F.S.A. § 350.62.—*State ex rel. Simmons v. Harris*, 161 So. 374, 119 Fla. 375.—*Mand* 151(1).

Fla. 1934. Where Supreme Court could not reverse or affirm decree without rights of a defendant being affected, such defendant was "necessary party" to appeal.—*Gardner v. Northern Inv. Corp.*, 157 So. 665, 117 Fla. 291.—*App & E* 327(3).

Fla. 1934. Where title to mortgaged land was in her name, widow of mortgagor's grantee who was not personally liable for debt or sued as administratrix of grantee was "necessary party" to foreclosure suit.—*Hubbard v. Highland Realty & Investment Co.*, 156 So. 322, 115 Fla. 834.—*Mtg* 427(3).

Fla. 1934. Mortgagor against whom no personal judgment for deficiency was sought and who had conveyed away interest in mortgaged property held not "necessary party" to foreclosure suit.—*Hubbard v. Highland Realty & Investment Co.*, 156 So. 322, 115 Fla. 834.—*Mtg* 427(1).

Fla. 1929. Party directly affected by appeal is "necessary party" thereto. A party directly affected by an appeal is "necessary party" to the appeal.—*Hay v. Isetts*, 125 So. 237, 98 Fla. 1026.—*App & E* 322.

Fla. 1929. Mortgagor who has conveyed his interest and is made party to foreclosure suit, in which personal judgment for deficiency is sought against him, is "necessary party" to appeal from foreclosure decree. If a mortgagor, who has conveyed his interest in the mortgaged premises, has been made a party to the foreclosure suit, in which a personal judgment for any deficiency is sought against him, he is a necessary party to an appeal from the decree made and entered in said suit.—*Hay v. Isetts*, 125 So. 237, 98 Fla. 1026.—*Mtg* 573.

Fla. 1929. Fee owner of mortgaged premises is "necessary party" to appeal from foreclosure decree. The owner of the fee in mortgaged premises is a necessary party to an appeal from a decree foreclosing the mortgage.—*Hay v. Isetts*, 125 So. 237, 98 Fla. 1026.—*Mtg* 573.

Fla. 1929. Second mortgagee made party defendant to foreclosure suit is "necessary party" to appeal from decree subordinating second mortgage lien to complainant's lien. When the holder of a second mortgage is made a party defendant to the foreclosure suit, and the decree therein subordinates the lien of the second mortgagee to that of the complainant, the second mortgagee is a necessary party to an appeal from such decree.—*Hay v. Isetts*, 125 So. 237, 98 Fla. 1026.—*Mtg* 573.

Fla. 1929. Mortgagor who has conveyed his interest and is made party to foreclosure suit, in which personal judgment for deficiency is sought against him, is "necessary party" to appeal from foreclosure decree.—*Hay v. Isetts*, 125 So. 237, 98 Fla. 1026.—*Mtg* 573.

Fla. 1929. Fee owner of mortgaged premises is "necessary party" to appeal from foreclosure decree.—*Hay v. Isetts*, 125 So. 237, 98 Fla. 1026.—Mtg 573.

Fla. 1929. Second mortgagee made party defendant to foreclosure suit is "necessary party" to appeal from decree subordinating second mortgage lien to complainant's lien.—*Hay v. Isetts*, 125 So. 237, 98 Fla. 1026.—Mtg 573.

Fla. 1929. Party directly affected by appeal is "necessary party" thereto.—*Hay v. Isetts*, 125 So. 237, 98 Fla. 1026.—App & E 322.

Fla.App. 3 Dist. 1979. First or senior mortgagee is not a "necessary party" to foreclosure proceedings brought by junior mortgagee.—*Poinciana Hotel of Miami Beach, Inc. v. Kasden*, 370 So.2d 399, certiorari denied 381 So.2d 768.—Mtg 427(1).

Ga. 1943. In suit by judgment creditor of bankrupt to set aside certain deeds executed by bankrupt prior to bankruptcy as fraudulent conveyances so as to subject property to judgment lien, trustee in bankruptcy is a "necessary party" plaintiff by reason of trustee's duty to distribute value of lands exceeding amount of judgment and amount set apart as a homestead to bankrupt and to render decision *res judicata* as to any other proceedings by other creditors for same relief. *Bankr.Act* 1938, § 70, sub. a, 11 U.S.C.A. § 110, sub. a.—*Sims v. Wright*, 24 S.E.2d 663, 195 Ga. 562.—Bankr 2723.

Ga. 1942. In a proceeding in equity by a plaintiff in *fi. fa.* seeking injunction and appointment of a receiver to take possession of and protect the rents and profits from property levied on, where wife of defendant in *fi. fa.* had filed a claim to the property, defendant in *fi. fa.* was nevertheless a "necessary party."—*Pope v. U.S. Fidelity & Guaranty Co.*, 20 S.E.2d 13, 193 Ga. 769.—Execution 211.

Ga. 1941. Bill of exceptions would not be dismissed because party in trial court who was not interested in judgment excepted to was not made a defendant in error, since she was not a "necessary party."—*Johnson v. Giraud*, 13 S.E.2d 365, 191 Ga. 577.—App & E 336.1.

Ga. 1940. Where deputy clerk made entry of filing attacked by traverse, deputy was not merely a "proper party" but was a "necessary party" to traverse proceeding. Code 1933, §§ 24-2713, 81-214.—*Swift v. Swift*, 11 S.E.2d 660, 191 Ga. 129.—Clerks of C 71.

Ga. 1940. Where deputy clerk, by order of trial judge, was made a party in trial of traverse of entry of filing by deputy on motion for new trial, deputy was a "necessary party" as a defendant in error in bill of exceptions taken from a ruling finding on traverse in favor of deputy's entry, and hence motion to dismiss bill would be granted where deputy was not named as a defendant in error therein. Code 1933, §§ 24-2713, 81-214.—*Swift v. Swift*, 11 S.E.2d 660, 191 Ga. 129.—App & E 327(7).

Ga. 1940. Where testator's son filed suit against executor of his father's estate, his sister and his

mother in county in which sister and mother but not bank resided, seeking to establish that son had title to farm with its stock, implements, and equipment thereon free of liens, based on an alleged contract with testator, and seeking injunctive relief against sister and mother to prevent them from interfering with son's enjoyment of property, the court did not have jurisdiction, since the executor was the only "necessary party" for enforcement of the contract, and injunctive relief would only be incidental to main relief. Code 1933, § 3-202.—*First Nat. Bank v. Holderness*, 7 S.E.2d 682, 189 Ga. 819.—Venue 22(6).

Ga. 1940. Assignee, by virtue of assignment of security deed, was given all rights, interest and powers which the assignor had, and was authorized to reduce the secured note to judgment against the property in a proceeding in which the assignor was not a "necessary party." Code 1933, § 67-1501.—*Owens v. Conyers*, 7 S.E.2d 675, 189 Ga. 793.—Mtg 246, 417, 427(2).

Ga. 1940. In action by grantee in senior deed to cancel junior recorded deed as cloud on title, wherein grantee in junior deed sought cancellation of senior deed, grantor in both deeds was not such an "indispensable party" that his nonjoinder would prevent trial court from granting judgment on cross-action in absence of demurrer or special plea for nonjoinder, especially where grantor had not warranted title in senior deed, and hence was not a "necessary party" for whose nonjoinder petition would have been subject to demurrer. Code 1933, §§ 3-510, 29-401, 37-1004, 81-106, 81-1306, 110-104.—*Terry v. Ellis*, 7 S.E.2d 282, 189 Ga. 698.—Quiet T 30(3).

Ga. 1938. An "indispensable party" defendant in error is one who is interested in sustaining the judgment, and one who is a party in the court below and is interested in reversing the judgment is a "proper," if not a "necessary party," to bill of exceptions.—*Green v. Perryman*, 197 S.E. 880, 186 Ga. 239.—App & E 327(2).

Ga. 1937. A suit to enjoin breach of contract, whereby plaintiff was to operate and manage dairy owned by defendant and divide net profits with defendant, brought against defendant and codefendant whom defendant allegedly hired to demand possession of dairy, abated in its entirety on death of defendant, since defendant was, and codefendant was not, a "necessary party" to determination of controversy.—*Elliott v. Cline*, 191 S.E. 372, 184 Ga. 393.—Abate & R 64.

Ga. 1934. Where plaintiff traversed garnishee's answer and, in aid of traverse, filed equitable proceedings for purpose of establishing garnishee's liability to plaintiff, garnishee was "necessary party" to bill of exceptions brought to review order making exceptant party to equitable proceedings (*Civ.Code* 1910, § 6176).—*Columbus Fertilizer Corp. v. International Agr. Corp.*, 172 S.E. 918, 178 Ga. 282.—App & E 327(7).

Ga.App. 1953. Guardian appointed for minor in workmen's compensation proceeding is a "necessary party" on appeal to Court of Appeals from

decision of Superior Court affirming award of director granting compensation. Ga.Code Ann. § 114-421, as added by Laws 1952, p. 272.—*Utica Mut. Ins. Co. v. Rolax*, 75 S.E.2d 205, 87 Ga.App. 733.—Work Comp 1959.

Ga.App. 1950. Where verdict and judgment in suit against two co-defendants were entered against them jointly, fact that one of co-defendants was made a party defendant in motion for new trial by other co-defendant did not render him a "necessary party" to other co-defendant's appeal, and a motion to dismiss bill of exceptions because such co-defendant was not made a party defendant therein was properly overruled by trial court.—*Blaylock v. Ware*, 59 S.E.2d 274, 81 Ga.App. 498.—App & E 323(3).

Ga.App. 1949. Where trial court dismissed claim filed by third party to personalty levied upon under writ of fieri facias, original defendant alleged to be owner was not a "necessary party" to error proceeding brought in the Court of Appeals.—*Jones v. Major*, 55 S.E.2d 846, 80 Ga.App. 223.—App & E 327(2).

Ga.App. 1947. Defendant in the main case was not a "necessary party" in a bill of exceptions complaining of a ruling in ancillary garnishment case.—*Kibbler v. James*, 44 S.E.2d 910, 75 Ga.App. 852.—App & E 323(1).

Ga.App. 1942. Where the truth of an entry of levy of attachment was traversed and the entry imported a legal levy, the officer making the return was a "necessary party" to the proceeding on affidavit of illegality attacking execution and where he was not a party evidence offered to contradict entry of levy of attachment was properly excluded.—*Chastain v. Alford*, 20 S.E.2d 150, 67 Ga.App. 316.—Execution 168.

Ga.App. 1941. In determining whether or not a party to the first suit is a "necessary party" in second suit which is a renewal of the first, under the code providing that new suit after dismissal of first shall stand upon same footing as respects limitation, if they were parties to a joint contract or entitled to rights one against another by way of contribution in the event the plaintiff recovered, then they or their personal representatives must all be parties to the second suit. Code 1933, § 3-808.—*Chapman v. Lamar-Rankin Drug Co.*, 13 S.E.2d 734, 64 Ga.App. 493.—Lim of Act 130(11).

Ga.App. 1939. Where buyer of automobile executed retention of title contract to finance company for balance due on price and procured policy on automobile insuring against collision with loss payable to buyer and finance company as their interests might appear, insurer could not defeat claim of buyer by payment to finance company of amount less than actual amount of loss or damage sustained, unless insured was party to agreement or consented thereto; the buyer having such interest in the amount payable as would make him a "necessary party" to suit or agreement of settlement between insurer and finance company.—*Riley v. Federal Ins. Co.*, 5 S.E.2d 246, 60 Ga.App. 764.—Insurance 3390.

Ga.App. 1938. Under statute, a guardian's compromise settlement of a doubtful claim for or against his ward is conclusive until set aside in a direct proceeding which is instituted for that purpose and to which the guardian is a "necessary party." Code 1933, § 49-219.—*Campbell v. Atlanta Coach Co.*, 200 S.E. 203, 58 Ga.App. 824.—Guard & W 33, 37.

Ga.App. 1938. In suit by tenant's creditor against landlord for proceeds of crops sold by landlord after landlord waived his lien for rent in favor of creditor, tenant was not a "necessary party."—*Williford v. Culpepper*, 196 S.E. 113, 57 Ga. App. 666.—Land & Ten 249(2).

Ga.App. 1937. Where legal representative of defendant tenant in dispossessory proceeding has not been legally made party respondent to plaintiff's motion to vacate nonsuit and reinstate case, he is nevertheless a "necessary party" to bill of exceptions to judgment overruling motion (Code 1933, §§ 61-301, 61-303).—*Johnson v. Reed*, 193 S.E. 472, 56 Ga.App. 658.—Land & Ten 315(1).

Ga.App. 1937. A bill of exceptions to judgment overruling motion to vacate nonsuit of dispossessory proceeding and reinstate case was dismissible for lack of "necessary party," where only sureties on defendant tenant's eventual condemnation money bond were made parties defendant to bill of exceptions, and legal representative of deceased defendant tenant was not made party defendant to bill of exceptions, notwithstanding legal representative was made party respondent to motion in court below (Code 1933, §§ 61-301, 61-303).—*Johnson v. Reed*, 193 S.E. 472, 56 Ga.App. 658.—Land & Ten 315(1).

Ga.App. 1935. Surety on bond filed by defendant tenant in dispossessory warrant proceeding held not "necessary party" to bill of exceptions sued out by tenant to review judgment denying tenant's motion for new trial. Code 1933, § 6-1202.—*Logue v. Holleman*, 182 S.E. 200, 52 Ga.App. 36.—App & E 327(7).

Ga.App. 1934. Surety on replevin bond given by defendant in attachment proceeding is not "necessary party" to writ of error brought by plaintiff, assigning error on dismissal of attachment and failure to render judgment against surety along with general judgment against defendant in attachment, where it does not appear that surety was party in proceedings below or resisted plaintiff's attempt to have judgment rendered against him.—*Lawrence v. Lee's Department Store*, 172 S.E. 471, 48 Ga.App. 271.—App & E 327(7).

Ga.App. 1932. Insurance carrier held "necessary party" to claimant's writ of error to review judgment affirming compensation award.—*Cox v. Bibb Mfg. Co.*, 164 S.E. 97, 45 Ga.App. 158.—Work Comp 1867.

Idaho 1943. An action to quiet title to land sold to the state for delinquent drainage taxes and to drainage district warrants which were delivered to the state as escheated property would lie against the state officers, as against claim that the state was

a "necessary party", that consent to the action had not been given, and that to permit the action to proceed would be to allow an action against the state by indirection and would deprive the state and its officials of sovereign rights of immunity.—Roddy v. State, 139 P.2d 1005, 65 Idaho 137.—States 191.10.

Idaho 1930. In suit attacking validity of attachment and judgment against nonresident defendant by defendant's children on ground children were owners of realty involved, defendant in attachment held not "necessary party" (C.S. § 6784).—Welch v. Morris, 291 P. 1048, 49 Idaho 781.—Judgm 457.

Idaho 1914. A "necessary party" is one without whom the cause cannot be finally determined.—Taylor v. Lytle, 141 P. 92, 26 Idaho 97.—Parties 18.

Ill. 2001. Foster parent was not a "necessary party" to proceeding to remove child from foster care and, therefore, had no due process right to notice of guardian ad litem's motion for removal. U.S.C.A. Const.Amend. 14.—In re A.H., 254 Ill. Dec. 737, 748 N.E.2d 183, 195 Ill.2d 408.—Const Law 274(5); Infants 226.

Ill. 1990. Police superintendent who had filed charges that ultimately resulted in city's dismissal of officer was "necessary party" in administrative review action initiated by officer. S.H.A. ch. 110, ¶ 3–107.—Lockett v. Chicago Police Bd., 140 Ill. Dec. 394, 549 N.E.2d 1266, 133 Ill.2d 349.—Admin Law 513, 673; Mun Corp 185(12).

Ill. 1952. In action under Administrative Review Act to review a decision of Board of Review of the Department of Labor where claimant was an adverse party to defendant in proceedings before the board, claimant was a "necessary party" defendant. S.H.A. ch. 48, § 230; ch. 110, §§ 264, 271.—Cuny v. Annunzio, 104 N.E.2d 780, 411 Ill. 613.—Admin Law 673; Social S 633.

Ill. 1948. A "necessary party" is one who has such interest in matter in controversy that it cannot be determined without affecting such interest or leaving interests of parties before court in situation which might be embarrassing and inconsistent with equity.—Georgeoff v. Spencer, 79 N.E.2d 596, 400 Ill. 300.—Parties 18, 29.

Ill. 1946. Bank, to which life insurance company's majority stockholder transferred his shares in trust, was "necessary party" to another such company's stockholders' suit for accounting of moneys transferor and another director thereof received on transfer of its assets to first company.—Winger v. Chicago City Bank & Trust Co., 67 N.E.2d 265, 394 Ill. 94.

Ill. 1944. Where a city purported to vacate certain streets and alleys by ordinance to permit the construction of housing project and it did not appear whether the dedication of such streets and alleys to public use was under the common law or by statute and it was apparent that the city had a vital interest in question of title to such vacated property, the city was a "necessary party" to an action brought by housing authority to compel telephone company to remove its equipment from such

vacated streets.—St. Clair County Housing Authority v. Southwestern Bell Tel. Co., 56 N.E.2d 357, 387 Ill. 180.—Inj 114(3).

Ill. 1942. A devisee under a prior will was not a "necessary party" to suit to contest a later will.—Freasman v. Smith, 39 N.E.2d 367, 379 Ill. 79.—Wills 267.

Ill. 1941. In suit by surety on original administrator's bond against successor administrator to enforce subrogation to original administrator's rights as distributee, the original administrator was a "necessary party".—London & Lancashire Indem. Co. of America v. Tindall, 36 N.E.2d 334, 377 Ill. 308.—Subrog 41(4).

Ill. 1941. In a suit for subrogation the person whose property is to be applied in discharge of a debt by subrogation is a "necessary party" to the proceeding.—London & Lancashire Indem. Co. of America v. Tindall, 36 N.E.2d 334, 377 Ill. 308.—Subrog 41(4).

Ill. 1940. A suit to enjoin the levy and collection of taxes for payment of road bonds on ground that tax was invalid, in that special election held for purpose of determining whether the bonds should be issued, resulted in a defeat of the proposal as shown by determination of board of canvassers, was not a suit to contest the result of an election to which town was a "necessary party", but was a suit to declare a tax invalid, which did not require compliance with statute pertaining to election contests. S.H.A. ch. 46, § 120.—Lenhart v. Miller, 31 N.E.2d 781, 375 Ill. 346.—High 148.

Ill. 1940. On petition for leave to file a taxpayer's suit, seeking to enjoin the Governor, the auditor of public accounts, and the state treasurer from disbursing certain funds appropriated by an allegedly invalid act, the Governor was not a "necessary party" or a "proper party". Laws 1939, p. 222, § 6, art. 2; S.H.A. ch. 102, §§ 12, 14; S.H.A.Const. art. 5, § 16.—Lund v. Horner, 31 N.E.2d 611, 375 Ill. 303.—States 168.5.

Ill. 1940. In mandamus proceeding to compel director of the department of public works and buildings to institute appropriate condemnation proceeding where there was no indication that the Governor would refuse to sign the petition in the condemnation proceeding to ascertain plaintiff's damages and his act was required in the proceeding sought to be instituted through mandamus brought against the director who failed to act, Governor was not a "necessary party" in the mandamus suit. Smith-Hurd Stats. c. 47, § 1 et seq., and § 18 et seq.—People ex rel. O'Meara v. Smith, 29 N.E.2d 274, 374 Ill. 286.—Mand 152.

Ill. 1937. In proceeding by taxpayer for writ of mandamus to require Cook County Board of Appeals to assess capital stock of a domestic newspaper corporation as omitted property for certain years, the newspaper, as a property owner, was neither a "necessary party" or a "proper party." Smith-Hurd Stats. c. 120, § 314a(c).—People ex rel. Parker v. Board of Appeals of Cook County, 12 N.E.2d 666, 367 Ill. 559.—Mand 151(1).

Ill. 1937. In actions against officers or agents of state in which state's rights would be directly and adversely affected by judgment or decree sought, state is "necessary party" defendant, and, if it cannot be made a party, suit must be dismissed as to it. S.H.A.Const. art. 4, § 26.—*Schwing v. Miles*, 11 N.E.2d 944, 367 Ill. 436, 113 A.L.R. 1504.—*States* 203.

Ill.App. 1 Dist. 1998. "Necessary party" is one who has legal or beneficial interest in subject matter of litigation and will be affected by action of court.—*Holzer v. Motorola Lighting, Inc.*, 230 Ill. Dec. 317, 693 N.E.2d 446, 295 Ill.App.3d 963.—*Parties* 18, 29.

Ill.App. 1 Dist. 1996. "Necessary party" is individual or entity having present, substantial interest in matter being litigated, and in whose absence complete resolution of subject matter in controversy cannot be achieved without affecting that interest. S.H.A. 735 ILCS 5/2-406(b).—*Heritage Pullman Bank & Trust Co. v. Carr*, 219 Ill.Dec. 136, 670 N.E.2d 814, 283 Ill.App.3d 472.—*Parties* 18, 29.

Ill.App. 1 Dist. 1992. "Necessary party" to lawsuit is one whose participation is required either to protect interest which absent party has in subject matter of controversy which would be materially affected by his absence, to reach decision that will protect interests of those before court, or to enable court to make complete determination of controversy. S.H.A. ch. 110, § 2-405(a).—*Matter of American Mut. Reinsurance Co.*, 179 Ill.Dec. 200, 606 N.E.2d 32, 238 Ill.App.3d 1, appeal denied *Employers' Ins. of Wausau v. Selke*, 176 Ill.Dec. 796, 602 N.E.2d 450, 146 Ill.2d 625, appeal denied 176 Ill.Dec. 800, 602 N.E.2d 454, 146 Ill.2d 629.—*Parties* 18, 29.

Ill.App. 1 Dist. 1992. "Necessary party" is one who has legal or beneficial interest in subject matter of marriage dissolution litigation and will be affected by action of court.—*In re Marriage of Olbrecht*, 173 Ill.Dec. 661, 597 N.E.2d 635, 232 Ill.App.3d 358.—*Divorce* 70.

Ill.App. 1 Dist. 1990. Subcontractor was "necessary party" in its material supplier's action against general contractor and property owner to foreclose mechanics' lien on property; even if status as bankrupt or judgment proof would render subcontractor nonnecessary, there was no evidence that subcontractor was, in fact, bankrupt or judgment proof. S.H.A. ch. 82, §§ 11, 22, 28.—*Joseph T. Ryerson & Son, Inc. v. Manulife Real Estate Co.*, 152 Ill.Dec. 610, 566 N.E.2d 297, 207 Ill.App.3d 622.—*Mech Liens* 263(1).

Ill.App. 1 Dist. 1989. "Necessary party" is one whose presence in suit is required to protect interest which absentee has in subject matter of controversy which would be materially affected by judgment entered in his absence, or to reach decision which will protect interests of those who are before court, or to enable court to make complete determination of controversy.—*Flashner Medical Partnership v. Marketing Management, Inc.*, 136 Ill. Dec. 653, 545 N.E.2d 177, 189 Ill.App.3d 45.—*Parties* 18, 29.

Ill.App. 1 Dist. 1989. A "necessary party" is an individual or entity having a present, substantial interest in the matter being litigated, and in whose absence a complete resolution of a matter in controversy cannot be achieved without affecting that interest.—*Village of Schaumburg v. Metropolitan Sanitary Dist. of Greater Chicago*, 134 Ill.Dec. 119, 542 N.E.2d 119, 186 Ill.App.3d 69.—*Parties* 18, 29.

Ill.App. 1 Dist. 1987. "Necessary party" is individual or entity having present, substantial interest in matter being litigated, and in whose absence complete resolution of matter in controversy cannot be achieved without affecting that interest.—*Chariot Holdings, Ltd. v. Eastmet Corp.*, 106 Ill.Dec. 285, 505 N.E.2d 1076, 153 Ill.App.3d 50.—*Parties* 18, 29.

Ill.App. 1 Dist. 1986. A "necessary party" for purpose of joinder is one who has legal or beneficial interest in subject matter of the litigation and will be affected by the action of the court. S.H.A. ch. 110, § 2-405.—*Zurich Ins. Co. v. Raymark Industries, Inc.*, 98 Ill.Dec. 508, 494 N.E.2d 630, 144 Ill.App.3d 943, appeal denied.—*Parties* 18, 29.

Ill.App. 1 Dist. 1984. A "necessary party" is one whose presence is required to protect interest in subject matter of controversy which would be materially affected by judgment entered in his or her absence, to reach decision which will protect interests of those before the court or to enable court to make complete determination of controversy. S.H.A. ch. 110, § 2-405(a).—*Ellfott v. Chicago Title Ins. Co.*, 78 Ill.Dec. 521, 462 N.E.2d 640, 123 Ill.App.3d 226.—*Parties* 18, 29.

Ill.App. 1 Dist. 1979. To be a "necessary party," individual or entity involved must have present substantial interest in controverted matter such that litigation cannot be resolved without either affecting that interest or leaving interest of those who are before court in embarrassing or inequitable position.—*Rubin v. Boorstein*, 30 Ill.Dec. 154, 392 N.E.2d 919, 73 Ill.App.3d 689.—*Parties* 18, 29.

Ill.App. 1 Dist. 1975. "Necessary party" is one who has such an interest in the matter in controversy that it cannot be determined without either affecting that interest or leaving the interest of those who are before the court in a situation that might be embarrassing and inconsistent with equity.—*National Bank of Albany Park in Chicago v. S. N. H., Inc.*, 336 N.E.2d 115, 32 Ill.App.3d 110.—*Parties* 18, 29.

Ill.App. 1 Dist. 1956. Residuary trustee under will was not a "necessary party" in suit brought by beneficiary of charitable testamentary trust against Attorney General to determine whether terms of will directing use of income in erection and maintenance of enduring statuary and monuments authorized erection and maintenance of a memorial building.—*Art Institute of Chicago v. Castle*, 133 N.E.2d 748, 9 Ill.App.2d 473.—*Char* 50.

Ill.App. 1 Dist. 1943. In mandamus to compel reinstatement of telephone operator in Attorney General's office, where temporary clerk not under civil service was allegedly performing duties of a civil service telephone operator, temporary clerk

was not a "necessary party". *Smith-Hurd Stats. c. 24½, § 1 et seq.—People ex rel. Coryell v. Barrett, 51 N.E.2d 795, 320 Ill.App. 593.—Mand 151(2).*

Ill.App. 1 Dist. 1942. In suit to set aside release and to foreclose trust deed, where the trustee had conveyed property back to defendant the trustee was not a "necessary party".—*Hopstein v. Hentschel, 41 N.E.2d 229, 314 Ill.App. 387.—Mtg 427(2).*

Ill.App. 1 Dist. 1941. Where judgment had been obtained against corporation which was acting as agent for others and execution had been returned unsatisfied, the judgment debtor, a dissolved corporation, was not a "necessary party" to a creditors' suit to hold principals of judgment debtor. *S.H.A. ch. 22, § 49.—Abrams v. Harry A. Roth & Co., 34 N.E.2d 725, 310 Ill.App. 490.—Corp 548(7).*

Ill.App. 1 Dist. 1940. In proceeding to foreclose a trust deed securing payment of notes guarantors of which were equitable owners of the property conveyed by trust deed, guarantor was not a "necessary party".—*Berea College v. Killian, 26 N.E.2d 650, 304 Ill.App. 296.—Mtg 427(1).*

Ill.App. 1 Dist. 1938. The state director of public works was a "necessary party" to village taxpayer's suit to restrain village officials from expending funds allotted to village from motor fuel tax fund on reconstruction of state highway No. 42 in the village on ground that highway was already improved to its best use, since the expenditure of such funds by villages is expressly made subject to approval of state department. *S.H.A. ch. 120, §§ 417-439; ch. 121, § 274.—Capesius v. Moulton, 12 N.E.2d 911, 293 Ill.App. 630.—Mun Corp 1000(4).*

Ill.App. 2 Dist. 2000. A "necessary party" is one whose presence in the suit is required for any of three reasons: (1) to protect an interest which the absentee has in the subject matter of the controversy which would be materially affected by a judgment entered in his or her absence; (2) to reach a decision which will protect the interests of those who are before the court; or (3) to enable the court to make a complete determination of the controversy. *S.H.A. 735 ILCS 5/2-406(a).—In re Marriage of Devick, 248 Ill.Dec. 833, 735 N.E.2d 153, 315 Ill.App.3d 908.—Parties 18, 29.*

Ill.App. 2 Dist. 1995. "Necessary party" is one whose participation is required to (1) protect its interest in subject matter of controversy which would be materially affected by judgment entered in absence; (2) reach decision protecting interests of parties already before court; or (3) allow court to completely resolve controversy. *S.H.A. 735 ILCS 5/2-404, 2-405(a), 2-406(a).—Zurich Ins. Co. v. Baxter Intern., Inc., 211 Ill.Dec. 790, 655 N.E.2d 1173, 275 Ill.App.3d 30, rehearing denied, affirmed as modified 218 Ill.Dec. 942, 670 N.E.2d 664, 173 Ill.2d 235, rehearing denied.—Parties 18, 29.*

Ill.App. 2 Dist. 1994. "Necessary party" is one whose participation in litigation is required for any of three reasons: to protect interest which absent party has in subject matter of controversy which

would be materially affected by judgment entered in its absence; to reach decision which will protect interests of those before court; or to enable court to make complete determination of controversy.—*Emalfarb v. Krater, 203 Ill.Dec. 666, 640 N.E.2d 325, 266 Ill.App.3d 243, rehearing denied, appeal denied 207 Ill.Dec. 515, 647 N.E.2d 1008, 159 Ill.2d 566.—Parties 18, 29.*

Ill.App. 2 Dist. 1990. "Necessary party" is one who has interest in subject matter or suit which may be materially affected by judgment entered in the person's absence; such party must be joined unless joinder would destroy jurisdiction or party is not amenable to court's jurisdiction.—*Safanda v. Zoning Bd. of Appeals of City of Geneva, 149 Ill.Dec. 134, 561 N.E.2d 412, 203 Ill.App.3d 687, appeal denied 153 Ill.Dec. 384, 567 N.E.2d 342, 136 Ill.2d 554.—Parties 18, 29.*

Ill.App. 2 Dist. 1987. "Necessary party" is one whose presence is required: to protect substantial interest of party which will be materially affected by judgment entered in party's absence; to reach decision which will protect interest of those before court; or to enable court to completely resolve controversy.—*West Bend Mut. Ins. Co. v. Salemi, 110 Ill.Dec. 608, 511 N.E.2d 785, 158 Ill.App.3d 241, appeal denied 113 Ill.Dec. 320, 515 N.E.2d 129, 116 Ill.2d 577.—Parties 18, 29.*

Ill.App. 2 Dist. 1984. A "necessary party" is an individual or entity having a present, substantial interest in the matter being litigated, and in whose absence complete resolution of the subject matter in controversy cannot be achieved without affecting that interest.—*Brumley v. Touche, Ross & Co., 79 Ill.Dec. 57, 463 N.E.2d 195, 123 Ill.App.3d 636, appeal after remand 93 Ill.Dec. 816, 487 N.E.2d 641, 139 Ill.App.3d 831.—Parties 18, 29.*

Ill.App. 2 Dist. 1968. Proposed lessee of property which had been added to shopping center was not "necessary party" to declaratory judgment action brought by lessor for declaration that so leasing the property would not violate restrictive covenant in defendant-lessees' lease prohibiting lessor from leasing any of shopping center area to business substantially competing with defendant-lessees' business. *S.H.A. ch. 110, § 57.1(1).—Crest Commercial, Inc. v. Union-Hall, Inc., 243 N.E.2d 652, 104 Ill.App.2d 110.—Decl Judgm 296.*

Ill.App. 2 Dist. 1942. Where party does not claim title through or under mortgagee or mortgagor, he is neither a "proper party" nor a "necessary party" to foreclosure proceeding, and should be dismissed from suit, since the only proper parties are the mortgagor and the mortgagee and those who acquire rights under them subsequent to the mortgage.—*Korngabel v. Fish, 40 N.E.2d 314, 313 Ill.App. 286.—Mtg 475.*

Ill.App. 2 Dist. 1940. To render a person a "necessary party" to a chancery proceeding, it must appear that the person may be compelled to respond to the prayer of plaintiff's bill, and where there is nothing he is called upon to do or can be compelled to do as a duty, he is not a "necessary

party".—*Brock v. Pomeroy*, 27 N.E.2d 56, 305 Ill. App. 127.—Parties 29.

Ill.App. 3 Dist. 1994. "Necessary party," for purposes of joinder rule, is defined as person whose presence is required for any of three reasons: to protect person's interest in litigation's subject matter, to enable court to reach decision which will protect interests of persons already parties, or to enable court to make complete determination of the controversy. S.H.A. 735 ILCS 5/2-406(a).—*People ex rel. Dept. of Transp. v. Walliser*, 196 Ill.Dec. 345, 629 N.E.2d 1189, 258 Ill.App.3d 782, appeal denied 205 Ill.Dec. 184, 642 N.E.2d 1301, 157 Ill.2d 520.—Parties 18, 29.

Ill.App. 3 Dist. 1992. "Necessary party" is one whose presence in suit is required either to protect interest which absentee has in subject matter of controversy which would be materially affected by judgment entered in his or her absence, to reach decision which will protect interests of those before the court, or to enable court to make complete determination of the controversy.—*Treschak v. Yorkville Nat. Bank*, 178 Ill.Dec. 558, 604 N.E.2d 1081, 237 Ill.App.3d 855.—Parties 18, 29.

Ill.App. 3 Dist. 1987. Employee, whose tort claims against tort-feasors were barred by res judicata and statute of limitations for personal injuries, had no right affected by employers' action against tort-feasors to obtain indemnity for workers' compensation payments and, therefore, was not "necessary party" entitled to intervene. S.H.A. ch. 48, ¶¶ 138.5, 138.5(b); ch. 110, ¶¶ 2-408(b), 13-202.—*Sankey Bros., Inc. v. Guillems*, 105 Ill.Dec. 434, 504 N.E.2d 534, 152 Ill.App.3d 393, appeal denied 110 Ill.Dec. 465, 511 N.E.2d 437, 115 Ill.2d 550.—*Work Comp* 2223.

Ill.App. 3 Dist. 1985. "Necessary party" is one whose presence in suit is required for any of three reasons, namely, to protect an interest which absentee has in subject matter of controversy which would be materially affected by judgment entered in its absence, to reach decision which will protect interests of those who are before court, or to enable court to make a complete determination of the controversy.—*Burt v. Board of Educ. of Coal City Community Unit School Dist. No. 1*, 87 Ill.Dec. 500, 477 N.E.2d 247, 132 Ill.App.3d 393.—Parties 18, 29.

Ill.App. 3 Dist. 1941. Where all of the decrees and orders involved on appeal from an order granting a petition for the appointment of a receiver to collect rents from mortgaged premises during period of redemption until deficiency judgment was paid had specific reference to two-thirds undivided interest in land which was expressly covered by a second mortgage, present owner of the other one-third interest was not a "necessary party" to petition for appointment of receiver.—*Farmers State Bank v. Sallee*, 37 N.E.2d 576, 311 Ill.App. 646.—*Mtg* 550.

Ill.App. 3 Dist. 1939. Where lease was made with understanding that as soon as crop was harvested lease would expire and tenant's crop was completely harvested at time partition suit was

filed, tenant was not a "necessary party" to the partition suit.—*Finley v. Rowand*, 20 N.E.2d 997, 300 Ill.App. 404.—*Partit* 46.1.

Ill.App. 3 Dist. 1937. In mortgage foreclosure suit, defendant who claimed under warranty deed from mortgagor executed but not recorded prior to the execution of the mortgage was a "proper" and "necessary party," and circuit court had jurisdiction to pass upon his rights and settle the same by decree.—*Millikin Trust Co. v. Gregory*, 10 N.E.2d 853, 292 Ill.App. 28.—*Mtg* 426.

Ill.App. 3 Dist. 1937. In mortgage foreclosure proceeding by purchaser from mortgagee's assignee, mortgagee who delivered possession of mortgage and note secured thereby held not "necessary party."—*Taylor v. Filson*, 6 N.E.2d 253, 288 Ill.App. 442.—*Mtg* 427(2).

Ill.App. 5 Dist. 1984. "Necessary party" is an individual or entity having a present, substantial interest in matter being litigated, and in whose absence complete resolution of matter in controversy cannot be achieved without affecting that interest; determination of whether a party is necessary to cause of action is controlled by issues presented in the case through pleadings and evidence and not by final outcome of the litigation.—*Pieschalski v. Oslager*, 83 Ill.Dec. 663, 470 N.E.2d 1083, 128 Ill.App.3d 437.—Parties 18, 29.

Ill.App. 5 Dist. 1980. To be a "necessary party" one must have a present substantial interest in the controverted matter such that the matter could not be resolved without injuriously affecting his rights or leaving the interests of those in fact before the court in an embarrassing or inequitable position.—*Klingel v. Kehrler*, 36 Ill.Dec. 719, 401 N.E.2d 560, 81 Ill.App.3d 431.—Parties 18, 29.

Ill.App. 5 Dist. 1979. "Necessary party" is individual or entity having present, substantial interest in matter being litigated, and in whose absence complete resolution of matter in controversy cannot be achieved without affecting that interest. S.H.A. ch. 110, § 25(1).—*Bovinnett v. Rollberg*, 29 Ill.Dec. 470, 392 N.E.2d 27, 73 Ill.App.3d 490, appeal after remand 64 Ill.Dec. 658, 440 N.E.2d 210, 109 Ill. App.3d 41.—Parties 18, 32.

Ind. 1943. One of petitioners in drainage proceeding, who was not shown by record to have withdrawn and who was a party to judgment with an interest adverse to remonstrators, was a "necessary party" to remonstrators' appeal, and failure to name him as an appellee required dismissal of appeal for lack of jurisdiction. Rules of Supreme Court, rule 2-8.—*Hayes v. Adams*, 49 N.E.2d 345, 221 Ind. 480.—*Drains* 36(3).

Ind. 1942. Where it was alleged that contract between labor union and corporation was made for the benefit of union members who were employees of the corporation and that injury complained of was an injury to the employees rather than to the union, the union was not a "necessary party" to action against corporation to enjoin violation of the contract.—*Janalene, Inc. v. Burnett*, 41 N.E.2d 942, 220 Ind. 253.—*Inj* 114(2); *Labor* 924.1.

Ind. 1941. A wife is not a "necessary party" to an action seeking a money judgment against her husband.—*Shafer v. Shafer*, 37 N.E.2d 69, 219 Ind. 97.—Hus & W 221.

Ind. 1940. A plaintiff suing as representative of his class for recovery from county of building, erection, construction, and repair permit and inspection fees was the only "necessary party" to be named as appellee on appeal from judgment in favor of plaintiff and other persons paying such fees. *Burns' Ann.St.* §§ 2-220, 2-3212, 2-3213.—*Board of Com'rs of Vanderburgh County v. Sanders*, 30 N.E.2d 713, 218 Ind. 43, 131 A.L.R. 1048.—App & E 327(7).

Ind. 1939. A criminal contempt which tends to bring the court into disrepute or which interferes with the process and proceedings of the court is an offense not against any individual but against the state, and in any action charging such contempt or on appeal from a conviction for criminal contempt, the state is a "proper party" and also a "necessary party." *Burns' Ann.St.* §§ 3-907, 3-911.—*Ex parte Fennig*, 23 N.E.2d 678, 216 Ind. 298.—Contempt 41.1, 66(4).

Ind. 1939. In divorced wife's civil contempt proceedings against divorced husband for failure to comply with order directing husband to pay certain sum per week for support of minor child, state was not a "necessary party" so as to require service of notice of appeal on prosecuting attorney, since state had no direct interest in payment of money by husband.—*Hays v. Hays*, 22 N.E.2d 971, 216 Ind. 62.—Child S 473.

Ind. 1924. Any party who has an interest that judgment appealed from be maintained is a "necessary party" to appeal.—*Hughes v. Yates*, 144 N.E. 863, 195 Ind. 182.—App & E 327(2).

Ind.App. 1996. "Necessary party" to paternity action is one who must be joined in action for just adjudication. *West's A.I.C.* 31-6-6.1-2(c).—*In re Paternity of V.M.E.*, 668 N.E.2d 715, rehearing denied.—Child 30.

Ind.App. 5 Dist. 1994. "Necessary party" in paternity case is one who must be joined in action for just adjudication. *West's A.I.C.* 31-6-6.1-2(c).—*Matter of Paternity of H.J.F.*, 634 N.E.2d 551.—Child 30.

Ind.App. 1 Dist. 1993. School board was "necessary party" to challenge to eligibility of board's trustees; thus, petition for review was insufficient, as it failed to name board as party. *West's A.I.C.* 4-21.5-5-6(d).—*Lythgoe v. Summers*, 626 N.E.2d 564.—Schools 53(2).

Ind.App. 5 Dist. 1991. Under terms of paternity statute, which states that child, child's mother and person alleged to be father are "necessary parties," "necessary party" is not presumptive party, but is merely one who must be joined in action for just adjudication. *West's A.I.C.* 31-6-6.1-2(c).—*J.E. v. N.W.S. by S.L.S.*, 582 N.E.2d 829, rehearing denied, and transfer denied.—Child 30.

Ind.App. 1941. In proceeding on claim for compensation for death of employee, insurance carrier was a "proper party" but not a "necessary party". *Const. art. 1, §§ 12, 21.*—*Bituminous Cas. Corp. v. Dowling*, 37 N.E.2d 684, 111 Ind.App. 256.—Work Comp 1194.

Ind.App. 1941. In action against members of firm to recover indebtedness allegedly due under a contract to purchase farm equipment, where contract expressly provided that members were bound by the act of a third person in all respects as if performed by members in person, complaint was not demurrable for failure to join third person as a "necessary party" though prior note evidencing part of the indebtedness had been signed by the third person, since it could be assumed that third person signed the note not to bind himself but as agent. *Burns' Ann.St.* §§ 2-1007, 19-1915.—*George v. Massey Harris Co.*, 34 N.E.2d 956, 109 Ind.App. 305.—Princ & A 188.

Ind.App. 1939. In suit by pledgee of a participation certificate, against trustees who were administering trust created for distribution of assets of bank to stockholders to whom participation certificates were issued, based on payment of dividends of the trust to pledgor and application of dividends to pledgor's indebtedness to bank in disregard of pledgee's rights, the pledgor was not a "necessary party."—*Crowder v. Terhorst*, 21 N.E.2d 141, 107 Ind.App. 288.—Banks 40; Plgs 34.

Ind.App. 1937. In action by insured on fire policy containing provision that any loss was payable to mortgagee as his interest in insured property might appear, mortgagee was "necessary party" to litigation and entitled to have his respective interest determined, whether it was severable or otherwise.—*Commercial Union Fire Ins. Co. of New York v. Wade*, 8 N.E.2d 1009, 103 Ind.App. 461.—Insurance 3567.

Ind.App. 1936. Where court refused to allow administrator additional compensation for services, and administrator appealed from order overruling motion for new trial without naming deceased's minor daughter as appellee, Appellate Court had no authority to disturb judgment, since minor was interested in judgment's being maintained and a "necessary party" to appeal, notwithstanding minor's guardian ad litem was named as appellee. *Burns' Ann.St.* § 6-1408.—*Gary State Bank v. Gary State Bank*, 2 N.E.2d 814, 102 Ind.App. 342.—App & E 327(7); Infants 74.

Ind.App. 1936. Any party who has an interest that judgment appealed from be maintained is a "necessary party" to appeal.—*Gary State Bank v. Gary State Bank*, 2 N.E.2d 814, 102 Ind.App. 342.—App & E 327(2).

Ind.App. 1934. Insolvent administrator's bondsmen who were liable on judgment requiring administrator to turn over certain funds to clerk of court to obtain his discharge could appeal without joining administrator, since administrator was not "necessary party" to appeal having interest in maintaining judgment against relief sought by bondsmen. *Burns' Ann.St.* 1926, § 3310 (*Burns' Ann.St.*

§ 6-2001), 3311, § 6-2002 (See Rules of Procedure and Practice in Supreme and Appellate Courts, rule 2-2).—*Jaqua v. Reinhard*, 190 N.E. 887, 99 Ind. App. 261.—App & E 323(2).

Iowa 1944. In pedestrian's action against city for injuries sustained in a fall on an icy sidewalk, adjoining property owner who allegedly had duty of maintaining sidewalk was not a "necessary party" within statute declaring that court must order other parties brought in when a determination of the controversy cannot be made without presence of such other parties. Code 1939, §§ 10972, 10981.—*Geagley v. City of Bedford*, 16 N.W.2d 252, 235 Iowa 555.—Parties 51(4).

Iowa 1942. Injured party suing insured automobile owner was not a "necessary party" to agreement between automobile liability insurer and insured whereby insurer undertook defense of action against insured without waiving rights under coverage exclusion clause of policy, and injured party was not entitled to any notice of the agreement.—*McCann v. Iowa Mut. Liability Ins. Co. of Cedar Rapids*, 1 N.W.2d 682, 231 Iowa 509.—Insurance 311(1).

Iowa 1940. In suit in equity in which plaintiffs prayed that they be decreed owners of note and real estate mortgage securing it, as against claim of purchaser of note and mortgage at a sheriff's execution sale on a confessed judgment of purchaser against record owner of note and mortgage, on ground that record owner obtained instruments from plaintiffs by means of fraud, record owner was not a "necessary party", since any interest record owner had in note and mortgage had been lost to him by execution sale under his confessed judgment.—*Graham v. Williams*, 293 N.W. 562, 228 Iowa 1261.—Execution 283.

Iowa 1938. The surety on bond of administrator is not a "necessary party" to proceeding to determine amount of administrator's liability, and in absence of fraud or mistake, the adjudication of the amount found due by the court is binding on the surety.—*In re Davie's Estate*, 278 N.W. 616, 224 Iowa 1177.—Ex & Ad 535.

Iowa 1938. An order allowing claim against estate and directing its payment "at once" was proper, notwithstanding that surety on administrators' bond was not a party to the action, since action was against the estate and the surety was not a "necessary party".—*In re Davie's Estate*, 278 N.W. 616, 224 Iowa 1177.—Ex & Ad 535.

Kan. 1951. A "necessary party" to an action is one who may have an interest in the subject matter of the suit and whose right may be materially affected or concluded by the judgment and therefore one without whom the court will not proceed.—*Rush v. Concrete Materials & Const. Co.*, 238 P.2d 704, 172 Kan. 70.—Parties 18, 29.

Kan. 1943. The garnishee is a "necessary party" to appeal from order discharging garnishment. Gen.St.1935, 60-940 to 60-963, 60-951, 60-954, 60-3311.—*Stephens College v. Long*, 134 P.2d 625, 156 Kan. 449.—App & E 327(14).

Kan. 1943. Where garnishment was directed against county treasurer for purpose of reaching money turned over to treasurer by executor of an estate, on refusal of defendant and judgment debtor in main action to accept legacy, county treasurer was "necessary party" to appeal from order discharging garnishment, and, where he was not joined as a party to the appeal, appeal would be dismissed. Gen.St.1935, 60-940 to 60-963, 60-951, 60-954, 60-3311.—*Stephens College v. Long*, 134 P.2d 625, 156 Kan. 449.—App & E 327(14).

Kan. 1942. The owner of oil and gas lease on land was not a "necessary party" to action to quiet title as against owners of royalty rights arising out of mineral interests in the land, which plaintiffs acquired by purchase at sheriff's sale held pursuant to judgment in tax foreclosure proceeding. Gen.St. 1935, 79-330, 79-420, 79-2301 et seq., 79-2801 et seq.—*Rathbun v. Williams*, 121 P.2d 243, 154 Kan. 601.—Tax 806.

Kan. 1938. In heir's suit to set aside testatrix' deed on ground of mental incapacity and undue influence, testatrix' executor was neither a "necessary party" nor a "proper party." Gen.St.1935, 22-525, 22-727, 22-801, 22-803, 60-412.—*Osborne v. Kingston*, 80 P.2d 1063, 148 Kan. 314.—Ex & Ad 439.

Ky. 1993. Agister's lienholder's attorney was not "necessary party" to purported horse owner's appeal on issue of whether summary judgment was properly granted against him on his claims that horse was not subject either to statutory lien or boarding contract and, thus, purported owner was not required to name that attorney as party for purposes of appeal; order of sale directing that proceeds be applied to sums owed plaintiff by purported owner's former partner did not make plaintiff's attorney party, and summary judgment order, providing that former partner would pay to plaintiff sum of agister's claims plus attorney fees, was not basis for attorney to obtain execution in his own name.—*Knott v. Crown Colony Farm, Inc.*, 865 S.W.2d 326.—App & E 327(2).

Ky. 1993. Absent award of fees to attorney by judgment in his or her favor (thus allowing attorney enforcement of award by execution), there is no reason for requiring attorney to be named on appeal as "necessary party"; if award of attorney fees is to client, attorney is at most incidental beneficiary, and client is actually "real party in interest."—*Knott v. Crown Colony Farm, Inc.*, 865 S.W.2d 326.—App & E 327(2).

Ky. 1947. In action for sale of realty for division, legatee who was bequeathed money under will of deceased co-owner was not required to be joined on ground that he was a "necessary party" notwithstanding there was a deficiency in his bequest, since legatee had no interest in realty but could only become interested by asserting a lien against realty for deficiency. Civ.Code Prac. § 490, subd. 2.—*Trumbo v. Sanford*, 203 S.W.2d 22, 305 Ky. 231.—Partit 46.1.

Ky. 1943. Where a second mortgagee pledged to a bank notes secured by the second mortgage

and assigned them on the margin of the book wherein the mortgage was recorded, the holders of a first mortgage bond, in the absence of actual knowledge of the pledge, properly relied on the record and made only the bank a party defendant to their foreclosure suit, and the second mortgagee was not a "necessary party" or even a "proper party" thereto. Civ.Code Prac. § 694.—*Jones v. Chipps*, 176 S.W.2d 408, 296 Ky. 245.—*Mtg 427(4)*, 434.

Ky. 1942. The State Board of Education was not a "necessary party" to taxpayer's action under the Declaratory Judgment Act against county board of education seeking a determination as to constitutionality of provision of school law that pupils attending private school should have same right to transportation as pupils of public schools. Civ. Code Prac. § 639a-1 et seq.; Acts 1940, c. 66, amending Ky.St. § 4399-20.—*Sherrard v. Jefferson County Bd. of Educ.*, 171 S.W.2d 963, 294 Ky. 469.—*Decl Judgm 303*.

Ky. 1942. In suit to have sold mortgaged land in which plaintiff had an undivided one-seventh interest as an heir after mortgage lien was satisfied, plaintiff's husband was a "necessary party" in order to divest him of his inchoate right, which was a life estate in one-third of plaintiff's one-seventh interest. Ky.St. § 2132.—*Perry v. Bailey*, 160 S.W.2d 617, 290 Ky. 129.—*Mtg 427(1)*.

Ky. 1941. In suit to contest election on levy of taxes for local school purposes in certain subdistrict created for purpose of voting on question and which would become subdistrict only for purpose of levying and collecting tax, the Board of Education of the county, being the only body with power to conduct election, certify result and demand levy, was not only a "proper" but a "necessary party" and was properly made defendant, rather than the subdistrict. Ky.St. §§ 1596a-17, 4399-12.—*Gill v. Board of Educ. of Carter County*, 156 S.W.2d 844, 288 Ky. 790.—*Schools 103(2)*.

Ky. 1941. A Georgia corporation which executed a renewal note to plaintiff's predecessor was a "necessary party" to action on note against corporation's stockholders, notwithstanding nonresidency of corporation and formal dissolution thereof, if corporation, when action was commenced, possessed sufficient property to satisfy the debt or if corporation was indebted to others whose rights should have been determined, but corporation was not a necessary party if it was insolvent and if assets had been appropriated by its officer stockholders who voluntarily brought about its dissolution.—*Gearhart v. Citizens Bank*, 155 S.W.2d 751, 288 Ky. 167.—*Corp 691*.

Ky. 1941. Where Georgia corporation which executed a \$2000 renewal note to plaintiff's predecessor was thereafter dissolved, without notice to plaintiff, on voluntary petition of stockholders, and corporation owned only about \$300 worth of property which was in Tennessee when action was commenced on note against its former stockholders, and corporation's property upon dissolution had been transferred to stockholders, and such property

was worth more than amount due on note, corporation was not a "necessary party" to action on note.—*Gearhart v. Citizens Bank*, 155 S.W.2d 751, 288 Ky. 167.—*Corp 691*.

Ky. 1941. Wife of remainderman was not a "necessary party" to action for enforcement of tax liens, since a tax lien takes precedence over an inchoate right of dower.—*Stokes v. Commonwealth*, 150 S.W.2d 892, 286 Ky. 391.—*Tax 641*.

Ky. 1940. In action by taxpayer of county to recover amount of interest on loan made out of county road and bridge bond sinking fund by fiscal court, and to enforce a first mortgage after fiscal court had released mortgagors from liability for interest, bank which held a second mortgage, and to which county assigned note representing loan in question and first mortgage, was a "necessary party" and a "proper party," and its motion to dismiss, as to it, taxpayer's appeal from judgment dismissing petition, would be overruled, though judgment reserved rights of bank under the two mortgages. Ky.St. § 4308.—*Ward v. Roberts*, 136 S.W.2d 549, 281 Ky. 418.—*App & E 336.1*.

Ky. 1939. Landowner was bound by judgment against drainage district requiring drainage commissioner to follow certain procedure in repaying a fund diverted from construction fund to bond and interest fund, and the fact that such requirement might indirectly affect landowner did not make landowner a "necessary party" to the action. Ky. St. §§ 2380b-8, 2380b-45a, 2380b-52.—*Rollins v. Board of Drainage Com'rs of McCracken County for Mayfield Drainage Dist. No. 1*, 136 S.W.2d 1094, 281 Ky. 771.—*Judgm 702*.

Ky. 1939. Whoever is a party to the record in the lower court and would be a "necessary party" to any further proceedings after the reversal of the judgment, must be a "party to the appeal" or the appeal will be dismissed. Civ.Code Prac. § 739.—*Land v. Salem Bank*, 130 S.W.2d 818, 279 Ky. 449.—*App & E 327(2)*.

Ky. 1938. In contingent remainderman's action for recovery of value of standing timber which was removed from the land by defendant, the owner of the life estate, who could be made a defendant if he refused to join as a plaintiff, was a "necessary party." Civ.Code Prac. §§ 24, 28.—*Louisville Coöperage Co. v. Rudd*, 124 S.W.2d 1063, 276 Ky. 721, 144 A.L.R. 763.—*Parties 35; Remaind 17(4)*.

Ky. 1937. In action by vendor for injuries to land, purchaser having equitable title under contract purporting to sell and convey land under deed of general warranty subject to lien of vendor for purchase price and other conditions, was "real party in interest" or at least a "necessary party" to the action, even though the contract between vendor and purchaser be given effect of a title bond only. Civil Code Prac. § 18.—*Adams v. Boone Fiscal Court*, 113 S.W.2d 1, 271 Ky. 729.—*Ven & Pur 219*.

Ky. 1937. Where son-in-law sued for specific performance of father-in-law's alleged oral contract to convey land on which son-in-law made improvements or for lien for enhanced vendible value of

land, and where evidence disclosed that \$400 of defendant's daughter, the divorced wife of the son-in-law, went into the improvements, the divorced wife was a "necessary party," and court should have required her to be brought in or have dismissed the action without prejudice. Civ.Code Prac. § 28; § 371, subsec. 2(b).—*McMillen v. Bailey*, 106 S.W.2d 638, 269 Ky. 194.—Spec Perf 106(1).

Ky. 1936. Where petition stated cause of action on partnership's claim for balance due on contract, answer bringing in matters of avoidance essentially personal as against one partner and pleading that other partners had assented to defendant's offsetting debt owed partnership against the one partner's personal debt held not to set up counterclaim or set-off, and hence individual partner's son who was party to personal transaction on which defendant relied was not a "necessary party". Civ.Code Prac. § 96.—*Fairchild v. Marlowe*, 94 S.W.2d 1027, 264 Ky. 427.—Partners 198.1.

Ky. 1932. Insurer held "necessary party" to proceedings by beneficiary and insured's committee for declaratory judgment to determine rights to benefits under disability clause. Civ.Code Prac. §§ 639a-6, 639a-9.—*Ex parte Hirsch's Committee*, 53 S.W.2d 211, 245 Ky. 132.—Decl Judgm 295.

Ky. 1932. Where employer paid employee for injuries sustained through servant's negligence with servant's money, servant was "necessary party" to employer's action against compensation insurer. Civ.Code Prac. § 28.—*Aetna Life Ins. Co. v. Roper*, 50 S.W.2d 8, 243 Ky. 811.—Insurance 3567.

Ky. 1931. Where it appeared, in alleged owner's suit against pipe line carrier for proceeds of oil, that, before cancellation of alleged deed from owner, grantee had conveyed to third party who was claiming oil, third party held "necessary party." Civ.Code Prac. § 28.—*Cumberland Pipe Line Co. v. Raider*, 35 S.W.2d 532, 237 Ky. 344.—Parties 29.

La. 1946. In will contest filed by certain heirs of deceased against legatees under will, executor was without interest to maintain the will and was not a "necessary party", where executor had been previously discharged from his duties as executor and the property under his administration had been turned over to the legatees under court order.—*Artigue v. Artigue*, 26 So.2d 699, 210 La. 208.—Wills 267.

La. 1944. Parish Democratic Executive Committee was not a "necessary party" to proceeding under act of 1940 for recount of ballots cast for parish assessor at second primary election. LSA-R.S. 18:364(a, b, d, e, h).—*Courtney v. Abels*, 17 So.2d 337, 205 La. 304.—Elections 154(9).

La. 1942. The owner of a servitude or of a mortgage is not a "necessary party" to a petitory action brought against the owner of the land and is not obliged to appeal from the judgment against the owner of the land in order to protect his right to have the benefit of a reversal on an appeal by the owner of the land.—*Jackson v. Gulf Refining Co.*, 10 So.2d 593, 201 La. 721, certiorari dismissed

63 S.Ct. 770, 318 U.S. 796, 87 L.Ed. 1160.—App & E 1173(2); Real Act 8(1).

La. 1942. Where an employer is protected by an insurance policy which is a direct obligation by insurer to the person entitled to compensation and enforceable in his name, the employee may proceed by direct action against insurer to collect compensation, and the employer is not a "necessary party" to such suit.—*Mack v. W. Horace Williams Co.*, 9 So.2d 406, 200 La. 1042.—Work Comp 1194.

La. 1942. That employer who was a Texas resident was joined as a party defendant with compensation insurer in injured employee's suit for compensation did not militate against employee's right to sue insurer at its domicile, since employer was not a "necessary party". Act No. 20 of 1914, § 24, LSA-R.S. 23:1162, 23:1313.—*Harris v. Traders & General Ins. Co.*, 8 So.2d 289, 200 La. 445.—Work Comp 1188.

La. 1942. In absence of a decree holding unconstitutional the statute creating the Department of Highways as Highway Commission's successor, right of action, if any, for overcharges allegedly paid out by commission belonged to department as commission's successor, and the state was not a "necessary party" plaintiff to suit to recover overcharges. Act No. 47 of 1940, Tit. 19, § 1 et seq.—*Department of Highways v. Thomas*, 7 So.2d 619, 200 La. 73.—High 113(4).

La. 1941. A homestead association, as holder of mortgage note and payee under standard mortgage clause of fire insurance policy covering mortgaged premises, had interest in and claim against proceeds of policy, and hence was "necessary party" to suit by purchaser of mortgaged premises for reformation of policy by substituting plaintiff for vendor as insured and recovery of face value thereof.—*Randazzo v. Insurance Co. of State of Pennsylvania*, 200 So. 267, 196 La. 822.—Ref of Inst 33.

La. 1940. Plaintiff which took a mineral lease from some co-owners in indivision without the consent of the others was not a "necessary party" to proceedings partitioning property by licitation, and hence was without right or interest to complain about any irregularities in the proceedings. Act No. 205 of 1938 (LSA-R.S. art. 9:1105).—*Amerada Petroleum Corp. v. Reese*, 196 So. 558, 195 La. 359.—Partit 46.1.

La. 1940. The Recorder of Mortgages of the Parish of Orleans was not only a "necessary party" to the proceeding to cancel and erase from the records of his office, a general and special mortgage, but being bonded for the faithful execution of duties, had an appealable interest under the statute, from the judgment cancelling the encumbrances, as a party aggrieved by the judgment. Code Prac. art. 571; LSA-C.C. art. 3395.—*Succession of Burg*, 195 So. 513, 194 La. 985.—App & E 141; Mtg 311.

La. 1939. In suit to remove clouds from title to land which parish had expropriated and by notarial act had transferred interest therein to the United States, the United States was not a "necessary party" although the suit involved construction of

the notarial act for purpose of determining whether it granted a servitude to the United States or transferred full ownership, where defendants did not claim by or through the United States.—*Parish of Jefferson v. Texas Co.*, 189 So. 580, 192 La. 934, certiorari denied 60 S.Ct. 138, 308 U.S. 601, 84 L.Ed. 503.—*Quiet T* 30(3).

La.App. 1 Cir. 1967. Foreign executor was a proper party defendant, and a “necessary party” in order to maintain action for recovery of property allegedly wrongfully disposed of by him in ancillary succession proceeding, even without regard to question of fraud or conspiracy. *LSA—C.C.P. arts. 6, 3281 et seq., 3392, 5091; LSA—C.C. arts. 470, 2594.—Middle Tennessee Council, Inc., Boy Scouts of America v. Ford*, 205 So.2d 867.—*Ex & Ad* 525.

La.App. 1 Cir. 1938. In suit to replace a particular officer holding a particular position, officer sought to be ousted is a “necessary party.”—*State ex rel. Temple v. Vernon Parish School Bd.*, 178 So. 176.—*Offic* 74.

La.App. 1 Cir. 1936. In suit to have plaintiff declared party nominee, executive committee held “necessary party” defendant, properly joined with rival candidate. *Act No. 97 of 1922, § 27*, as amended by *Act No. 110 of 1934* (repealed 1950).—*Bauer v. Gilmore*, 165 So. 739.—*Elections* 154(9).

La.App. 2 Cir. 1942. Recorder was the only “necessary party” respondent to mandamus proceeding by former owner of timber to compel cancellation from records of ex parte affidavit executed by optionee purporting to set out contents of on oral option to purchase timber which had expired without optionee perfecting his rights thereunder prior to commencement of the proceeding.—*State ex rel. Thigpen v. Gayle*, 8 So.2d 315.—*Mand* 151(2).

La.App. 2 Cir. 1942. A husband, as head and master of spouses’ community of acquets and gains, was “necessary party” to suit for cancellation of recorded notarial deed, conveying realty to wife alone without declaring that it was to be her separate property, on ground that it was simulated conveyance without consideration.—*Anderson v. Edmondson*, 8 So.2d 131.—*Hus & W* 270(2).

La.App. 2 Cir. 1940. The party executive committee, having announced the results of a primary election, is not a “necessary party” defendant to suit to contest such election. *LSA—R.S. 18:364(b).*—*Beard v. Henry*, 199 So. 468.—*Elections* 154(9).

La.App. 2 Cir. 1940. A city, to which street shown on recorded subdivision plat was dedicated, was not a “necessary party” to suit by owner of lot in subdivision against person recording plat to establish existence of street and compel defendant to remove fence across it, where plaintiff showed injury peculiar to herself.—*Life v. Griffith*, 197 So. 646.—*Mun Corp* 671(9).

La.App. 4 Cir. 1963. The only necessary parties defendant in expropriation proceedings are owners of property; a lessee is not a “necessary party.”—

United Gas Pipe Line Co. v. New Orleans Terminal Co., 156 So.2d 297, writ refused 159 So.2d 284, 245 La. 567, writ refused 159 So.2d 284, 245 La. 568.—*Em Dom* 177.

La.App.Orleans 1949. Where wife engaged attorney who filed answer in husband’s divorce action and obtained divorce on wife’s reconventional demand, but wife failed to assert claim against husband for attorney’s fee, attorney could sue husband on quantum meruit for services rendered to the wife, and wife was not a “necessary party.”—*Courtin v. Lenz*, 42 So.2d 882.—*Divorce* 198.

La.App.Orleans 1941. In an election contest, the committee which tabulated and promulgated the returns is a “proper party” and a “necessary party.”—*State ex rel. Haas v. Gegenheimer*, 2 So.2d 238.—*Elections* 154(9).

La.App.Orleans 1939. In purchaser’s action for double amount deposited under land contract because of vendor’s failure to deliver merchantable title, vendor’s husband was not “necessary party,” notwithstanding purchaser’s allegation that title examiners demanded that any possible interest of husband be divested, where husband in fact had no interest in property.—*Richardson v. Charles Kirsch & Co.*, 189 So. 146, rehearing denied 189 So. 621.—*Hus & W* 213.

La.App.Orleans 1937. Under petition of indemnity insurer, alleging that it became liable to insured corporation for embezzlement by corporate employee, accomplished through connivance of corporate president, and became subrogated to rights of corporation against heir who accepted succession of corporate president, and that majority stockholder of corporation and heir conspired to defeat rights of insurer by transfer to majority stockholder of all stock not owned by her and execution of release to heir by such stockholder, heir could not raise issue of misjoinder of heir and such stockholder as defendants, since heir was a “necessary party.”—*Aetna Cas. & Sur. Co. v. Flair*, 177 So. 94.—*Parties* 91.

Me. 2001. Town was “necessary party” in mortgage foreclosure proceeding against taxpayer, in which mortgagee’s assignee alleged the invalidity of town’s automatic foreclosure of tax lien; nature of taxpayer’s remaining interest in the property, and thus the sums that might be due and owing to assignee, could not be finally determined until status of town’s interest in the property was resolved. 36 M.R.S.A. §§ 942, 943; *Rules Civ.Proc.*, Rule 19(a).—*Ocwen Federal Bank, FSB v. Gile*, 777 A.2d 275, 2001 ME 120.—*Mtg* 427(4).

Me. 1993. Permittee was “necessary party” to action challenging decision of the Commissioner of the Department of Human Services to issue permit to transport water in quantities exceeding ten gallons beyond boundaries of municipality and neighboring municipalities; failing to join permittee impeded his ability to protect his interest, and any relief that court might award would not “effectively and completely adjudicate the dispute” if permittee was not bound. 22 M.R.S.A. § 2660—A, subs. 1, 3; *Rules Civ.Proc.*, Rule 19.—*Centamore v. Com-*

missioner, Dept. of Human Services, 634 A.2d 950, appeal after remand 664 A.2d 369.—Admin Law 450.1; Waters 197.

Me. 1992. Joinder is mandatory and may proceed either on request of party or on court's own initiative if party's interest in litigation makes party's presence necessary to award effective and complete relief; "necessary party" is one without whom complete relief cannot be accorded among those already parties. 11 M.R.S.A. § 1-101 et seq.; Rules Civ.Proc., Rule 19(a).—Peoples Heritage Bank v. Grover, 609 A.2d 715.—Parties 18, 29.

Me. 1991. Landowner granted conditional use permit to construct parking area was "necessary party" to neighboring landowners' suit against town challenging grant of permit, and accordingly, reversal of town planning board's decision rendered in suit without permittee landowner being party would be vacated. Rules Civ.Proc., Rule 19(a).—Booker v. Town of Poland, 599 A.2d 812.—Zoning 582.1.

Me. 1940. If assignment of a real estate mortgage is absolute, and redemptioner has notice of assignment, mortgagee is not a "necessary party" to proceedings in equity to enforce right of redemption, but if assignment leaves an interest in mortgage which will be affected by decree, as when mortgagee has been in possession and received rents and profits, mortgagee must be joined as a party defendant and the court will not proceed in his absence. Rev.St.1930, c. 104, § 15.—Doyle v. Williams, 15 A.2d 65, 137 Me. 53.—Mtg 615.

Me. 1915. Where a Maine corporation owned a large majority of the stock of a New Jersey corporation, its minority stockholder could not maintain a bill to restrain the Maine company from voting its stock to elect directors of the New Jersey company, so that the latter company might secure an independent directorate, and not have its affairs manipulated for the advantage of the Maine company, without making the latter company a party defendant; the New Jersey company being a "necessary party," within the definition that an "indispensable party" is one who has such an interest in the subject-matter of the controversy that a final decree cannot be rendered between the other parties to the suit without radically affecting his interest.—Hyams v. Old Dominion Co., 93 A. 899, 113 Me. 337.

Md. 1993. Mother was "necessary party" whose joinder was required in maternal grandparents' action against father, seeking grandparental visitation rights; respective claims of grandparents and father were circumscribed to some extent by mother's visitation rights as defined in divorce and consent order, and her visitation rights were at stake, as they were potentially subject to modification. Md. Rule 2-211(a).—Fairbanks v. McCarter, 622 A.2d 121, 330 Md. 39.—Child C 409.

Md. 1947. In suit by one tenant in common against another to have deeds declared void, for accounting of rents and profits from realty, and for appointment of trustee for sale of realty and distribution of proceeds, complainant's husband, whom she married after becoming a tenant in common,

was not a "necessary party". Code 1939, art. 45, § 7.—Maskell v. Hill, 55 A.2d 842, 189 Md. 327.—Hus & W 221.

Md. 1943. An insane person is ordinarily a "proper" if not a "necessary party" defendant to an action at law involving his rights.—Alexander v. Rose, 30 A.2d 785, 181 Md. 447.—Mental H 481.1.

Md. 1941. The personal representative of a decedent is a "necessary party" to suit involving title to property owned by decedent at time of death.—Krauch v. Krauch, 20 A.2d 719, 179 Md. 423.—Ex & Ad 439.

Md. 1941. Where decedent conveyed leasehold to one of her sons in trust for both and, after grantee reassigned leasehold to decedent, reconveyed leasehold to grantee, decedent's personal representative was not a "necessary party" to suit between sons to establish title to the leasehold.—Krauch v. Krauch, 20 A.2d 719, 179 Md. 423.—Ex & Ad 439.

Mass. 1940. Where testator's heir at law took no interest under terms of instruments purporting to be testator's will and failed, after notice of pendency of petition for probate, to appear in opposition to probate for more than two months thereafter, during which time decrees confirming adjustment of controversy concerning probate and allowing the will had been entered, the heir was not a "necessary party" to compromise agreement and was not entitled to revocation of the confirmation decrees. G.L.(Ter.Ed.) c. 204, § 15 (M.G.L.A.).—McDonagh v. Mulligan, 30 N.E.2d 385, 307 Mass. 464.—Wills 230.

Mass. 1939. In wife's suit to set aside husband's allegedly fraudulent conveyance and to reach and apply property to satisfaction of New York judgment for damages for breach of separation agreement, husband was a "necessary party" where bill alleged that only husband had any interest in property.—Blumenthal v. Blumenthal, 21 N.E.2d 244, 303 Mass. 275.—Hus & W 221.

Mich. 1947. Township, which had part of its territory incorporated as a fifth class city pursuant to favorable result of election, was a "necessary party" in quo warranto proceedings to determine validity of the election. Comp.Laws 1929, §§ 15298, 15299.—Smith v. Norton Tp., Muskegon County, 29 N.W.2d 836, 319 Mich. 365.—Quo W 38.

Mich. 1939. In garnishment proceeding, where debtor's wife had leased safety deposit box in garnishee bank and had authorized debtor to have access thereto, and order interpleading wife in the proceeding was vacated, court thereafter had no right to reach contents of the box, since wife was a "necessary party," without joinder of whom court has no jurisdiction.—First Nat. Bank v. Croman, 284 N.W. 912, 288 Mich. 370.—Garn 85.

Mich. 1938. In suit to vacate probate court orders approving trustee's accounts and for all accounting, foundation incorporated by trustee to receive trust fund for crippled children was a "necessary party" defendant and had right to have

suit dismissed or prosecuted by proper party plaintiff, especially where plaintiff had made foundation a party defendant.—*King v. Emmons*, 277 N.W. 851, 283 Mich. 116, 115 A.L.R. 564.—*Trusts* 328.

Mich.App. 1995. Michigan Chiropractic Legal Action Committee (MCLAC) was not “necessary party” to declaratory judgment suit between chiropractors and no-fault insurer and, therefore, did not need to be joined; notwithstanding common interest of MCLAC in suit, its joinder was not essential to determination of rights and obligations between parties or complete relief. MCR 2.205(A).—*Hofmann v. Auto Club Ins. Ass’n*, 535 N.W.2d 529, 211 Mich.App. 55, appeal denied 552 N.W.2d 170, 452 Mich. 870, reconsideration denied 554 N.W.2d 313, 452 Mich. 870.—*Decl Judgm* 295.

Minn. 1942. Where the probate court awarded two-thirds of the intestate’s half interest in a newspaper to the children, who gave their share to the widow for life, a suit between the children after the widow’s death for an accounting as to plaintiffs’ share of the property and profits did not involve a partnership accounting and hence the surviving partner in the newspaper business was not a “necessary party”.—*Lewis v. Lewis*, 2 N.W.2d 134, 211 Minn. 587.—*Des & Dist* 83.

Minn. 1935. Execution creditor was “necessary party” defendant to action to permanently enjoin sheriff from selling on execution realty which plaintiff claimed, and, where execution creditor was not made defendant, plaintiff was not entitled to temporary injunction.—*Cheney v. Bengtson*, 259 N.W. 59, 193 Minn. 586, 106 A.L.R. 611.—*Execution* 172(3).

Miss. 1965. Where property was sold for taxes and tax collector’s list had been filed with chancery clerk and recorded long prior to commencement of, and entry of judgment in, eminent domain action tax sale purchaser was “necessary party” to eminent domain proceeding. Code 1942, §§ 2751, 4333, 9746, 9935, 9936, 9979; Const.1890, §§ 14, 17.—*Mississippi State Highway Commission v. Casey*, 178 So.2d 859, 253 Miss. 685.—*Em Dom* 177.

Miss. 1952. In action in ejectment by those claiming under an oil, gas, and mineral lease from the United States, which would not consent to join in the action, the United States was not a “necessary party”, since it was immune from suit and rule as to necessary parties was not applicable.—*Sistrunk v. Graham*, 61 So.2d 335, 215 Miss. 552.—*U S* 135.

Miss. 1949. Third party, who entered into conditional contract with owner of realty to enter into lease if litigation concerning restrictive covenant in deed terminated favorably for owners, was not a “necessary party” in suit by owners to quiet title. Code 1942, § 1324.—*Magnolia Textiles v. Gillis*, 41 So.2d 6, 206 Miss. 797.—*Quiet T* 30(3).

Miss. 1947. Suit against bank and administratrix praying that funds, which had been deposited in bank by deceased with notation on passbook that deposit was payable on deceased’s death to plain-

tiff, be adjudged to belong to plaintiff and not to deceased’s estate, was properly dismissed without prejudice, where it had been brought contrary to statute, within six months of appointment of administratrix, since administratrix was a “necessary party” without whom court could not properly proceed. Code 1942, § 612.—*Matthews v. Redmond*, 32 So.2d 123, 202 Miss. 253.—*Ex & Ad* 439.

Miss. 1947. If claimant’s demand for money, which had been deposited by deceased in bank with notation on passbook that deposit was payable to claimant on deceased’s death, be considered as a suit against deceased’s estate, then bank was a “necessary party” without which no final decree could properly be made.—*Matthews v. Redmond*, 32 So.2d 123, 202 Miss. 253.—*Ex & Ad* 438(7).

Miss. 1942. Where husband owning land which was not a homestead mortgaged the land, and wife did not join in execution of mortgage which misdescribed land, and husband and wife thereafter occupied land as a homestead, the mortgage was at least a “covenant” by husband to execute another conveyance to the right land when called upon to do so by mortgagee and hence wife was neither a “necessary party” nor a “proper party” to mortgagee’s suit against husband for reformation of mortgage.—*Smith v. Smith*, 8 So.2d 461, 193 Miss. 201.—*Home* 95; *Ref of Inst* 33.

Miss. 1941. Where attachment suit in chancery was commenced in Prentiss county, in which county codefendant, who was alleged to have property belonging to nonresident defendants, resided, and codefendant’s presence was necessary to enable complainant to proceed with suit and to realize on any decree in complainant’s favor, codefendant was a “necessary party” to suit within statute providing that suits in chancery may be brought in any county where defendant or any necessary party defendant resides, and hence suit could be maintained in Prentiss county, although no other defendant resided therein. Code 1930, §§ 173, 363.—*Gulf Refining Co. v. Mauney*, 3 So.2d 844, 191 Miss. 526.—*Venue* 22(6).

Miss. 1940. In suit to cancel sale of property to the state for taxes and patents from state thereto, refusal to allow amendment alleging that patents to land were fraudulently obtained from the state and praying that process issue to the state land commissioner was not error, since land commissioner only can raise the question of fraud on the state in obtaining patents to land, and whether he shall raise the issue is for his own determination, and in absence of statute to contrary he is not “necessary party” in suit to cancel tax sale.—*Jones v. Russell*, 194 So. 290, 187 Miss. 827.—*Tax* 809(4).

Miss. 1940. In action by assignee of claims of tenants against plantation companies to recover alleged usurious interest charges, for forfeiture of principal, and for accounting for price received for cotton produced by tenants, nonresident corporation was not a “necessary party” defendant, or “material party” defendant, because of alleged fact that it owned the capital stock of the plantation companies and that it and those companies had the

same personnel on their boards of directors.—McRae v. Ashland Plantation Co., 192 So. 847, 187 Miss. 350.—Corp 506.

Miss. 1936. Beneficiary's complaint in action on life policy joining as defendants other parties who claimed proceeds held demurrable for misjoinder, since beneficiary's cause of action was legal, not equitable, insurer was only "necessary party," and other parties would not be affected by judgment or decree in action by beneficiary alone.—Standard Life Ins. Co. of the South v. Coleman, 170 So. 297, 176 Miss. 813.—Action 50(4.1).

Mo. 2002. A "necessary party" is one who must be joined if feasible because that person has a direct and immediate interest in the subject matter of the litigation and who, if not joined, would have the right to relitigate the question. V.A.M.R. 52.04(a).—State v. Planned Parenthood of Kansas, 66 S.W.3d 16, rehearing denied.—Parties 29.

Mo. 1952. Where it did not appear from face of plaintiff's petition, or any other part of record, that trustee named in deed of trust, under which foreclosure sale which plaintiff sought to set aside was held, claimed any interest under deed sought to be cancelled or in land involved and it did not appear that setting aside foreclosure sale and cancelling trustee's deed to defendant would in anywise affect interest of trustee, he was not a "necessary party" to the suit and, in no sense, was he an indispensable party without whose presence there could not be a complete determination of the controversy. V.A.M.S. § 507.030.—Casper v. Lee, 245 S.W.2d 132, 362 Mo. 927.—Mtg 369(6).

Mo. 1944. In suit to set aside fraudulent conveyances, the debtor is not a "necessary party" where he has parted with all his interest. Mo. R.S.A. § 3507.—Herriman v. Creason, 181 S.W.2d 502, 352 Mo. 1176.—Fraud Conv 255(3).

Mo. 1942. Commissioners of Department of Penal Institutions were the "real parties in interest" and the department itself was not even a "necessary party" in suit for a declaratory judgment that Drivers' License Act does not apply to commissioners in using convicts to operate motor vehicles, though convicts cannot obtain drivers' licenses, since commissioners and not department would be punished if their official acts should violate Drivers' License Act, and hence Supreme Court had jurisdiction to hear appeal from an adverse judgment by commissioners, who are "state officers" within meaning of constitution giving the Supreme Court jurisdiction of appeal by state officers. Mo.R.S.A. §§ 8443–8470, 8443(d), 8444, 8467; Mo. R.S.A.Const. art. 6, § 12.—Department of Penal Institutions v. Wymore, 165 S.W.2d 618, 350 Mo. 127.—Courts 231(5); Decl Judgm 303.

Mo. 1941. A person who has an interest in the subject matter in litigation of such a direct and immediate character that it would be legally affected by a judgment rendered in the case is a "necessary party" defendant as is also a person who has a right to litigate over again in a new proceeding the same questions involved in the case.—School Dist.

No. 24 of St. Louis County v. Neaf, 148 S.W.2d 554, 347 Mo. 700.—Parties 29.

Mo. 1940. One not having acquired title to notes secured by trust deeds on land sold for taxes was not a "necessary party" to tax suit.—Bullock v. E. B. Gee Land Co., 148 S.W.2d 565, 347 Mo. 721.—Tax 806.

Mo. 1940. Where a deed was a conveyance to a husband and wife, the wife was a "necessary party" to suit to cancel deed, whether suit was brought for alleged fraud in procurement of deed or for failure in consideration. R.S.1929, § 702 (V.A.M.S. § 507.030).—Baker v. Lamar, 140 S.W.2d 31.—Hus & W 221.

Mo. 1939. In action to cancel or set aside a deed, the grantor, if living, is a "necessary party," and, if dead, his heirs or other interested persons are "necessary parties."—Kidd v. Schmidt, 136 S.W.2d 72, 345 Mo. 645.—Can of Inst 35(1).

Mo. 1939. Where defendant, cross-petitioning for cancellation of deed from third party to plaintiffs, did not allege that defendant conveyed the lots to plaintiffs but that defendant caused the conveyance to be made and that, prior to the conveyance, defendant was the owner in fee simple and in possession, the third party was a "necessary party."—Kidd v. Schmidt, 136 S.W.2d 72, 345 Mo. 645.—Can of Inst 35(1).

Mo. 1939. Where corporation whose stock was transferred to trustees who were directors and officers in the company was not a party in proceedings wherein it was alleged that trustees violated trust instrument limiting compensation for their services to 5 per cent. of all disbursements made by them as trustees, in that they were paid salaries as officers of the corporation, whether instrument contemplated 5 per cent. therein mentioned was to include services to be rendered as officers of the corporation could not be determined, since corporation was a "necessary party."—Rossi v. Davis, 133 S.W.2d 363, 345 Mo. 362, 125 A.L.R. 1111.—Trusts 257.

Mo. 1939. The grantor is not a "necessary party" to a creditor's suit to set aside an alleged fraudulent conveyance, since grantor could not be prejudiced by determination subjecting property to payment of his debts and has no interest in the suit.—First Nat. Bank v. Vogt, 126 S.W.2d 199, 344 Mo. 284.—Fraud Conv 255(3).

Mo. 1939. Owner of property was "necessary party" to action to foreclose lien for state taxes, so that where no service was obtained on owner, judgment and sale thereunder were nullities, and judgment lien previously obtained by levee and drainage district was unaffected.—Davis v. Stevens, 124 S.W.2d 1132, 344 Mo. 24.—Tax 641, 658(2).

Mo. 1934. One who was at most a cropper, and was not a tenant and not in possession nor entitled thereto, held not "necessary party" plaintiff to action for rental value of land flooded because of failure of railroad to construct statutory ditches along its right of way. V.A.M.S. § 389.660.—Boggs v. Missouri-Kansas-Texas Ry. Co., 80 S.W.2d 141, 336 Mo. 528.—R R 114(1).

Mo.App. E.D. 1998. Person is "necessary party" if that person claims interest relating to subject of action and is so situated that disposition of action in person's absence may, as practical matter, impair or impede person's ability to protect that interest. V.A.M.R. 52.04.—Citizens Ins. Co. of America v. Leindecker, 962 S.W.2d 446.—Parties 18, 29.

Mo.App. E.D. 1984. Where individual was named legatee under will, which would forgive indebtedness of \$3,000 owed testator by individual and his wife, as legatee, individual was "necessary party" to will contest action. V.A.M.S. § 473.083.—Romann v. Bueckmann, 686 S.W.2d 25.—Wills 265.1.

Mo.App. S.D. 1994. Party must be found necessary to lawsuit before Court of Appeals considers whether that party is indispensable; person is "necessary party" if that person claims interest relating to subject of action and is so situated that disposition of action in person's absence may, as practical matter, impair or impede person's ability to protect that interest. V.A.M.R. 52.04(a).—Heitz v. Kunkel, 879 S.W.2d 770.—Parties 18, 29.

Mo.App. S.D. 1984. A party is a "necessary party" if he claims an interest relating to the subject of the action, and is so situated that the disposition of the action in his absence may, as a practical matter, impair or impede his ability to protect that interest. V.A.M.R. 52.04(a).—Bunker R-III School Dist. v. Hodge, 666 S.W.2d 20, appeal after remand 709 S.W.2d 884.—Parties 18, 29.

Mo.App. W.D. 1994. Director of Revenue is "necessary party" in proceedings on request for hearing on revocation of driver's license for refusal to submit to blood alcohol test, and failure to include Director as party is jurisdictional defect that deprives trial court of jurisdiction. V.A.M.S. § 577.041.—Riley v. Director of Revenue, 869 S.W.2d 273.—Autos 144.2(2.1).

Mo.App. W.D. 1993. "Necessary party" is one who is so vitally interested in subject matter of controversy that valid judgment adjudicating subject matter cannot be effectively rendered without presence as a party. V.A.M.R. 52.04.—In re Estate of Remmele, 853 S.W.2d 476.—Parties 18, 29.

Mo.App. W.D. 1992. Bank, which was lienholder and loss payee on automobile policy, was not "necessary party" so as to require its joinder in automobile insurer's declaratory judgment action in which issue was whether policy covered alleged insureds on date of automobile accident despite nonpayment of renewal period premium; bank, whose coverage was not in question, could protect its interest without joinder in that action. V.A.M.R. 52.04(a).—Shelter Mut. Ins. Co. v. Flint, 837 S.W.2d 524, rehearing, transfer denied, and transfer denied.—Decl Judgm 295.

Mo.App. 1978. Person is "necessary party" to lawsuit if in his absence complete relief cannot be accorded among those who are already parties. V.A.M.R. Civil Rule 52.04(a, b).—Morgan v. Warntee, 569 S.W.2d 391.—Parties 32.

Mo.App. 1977. In action brought by insured, who had assigned interest in disability insurance policy, against insurer seeking recovery under policy, assignee of interest in policy was only a "necessary party" and not an indispensable party. V.A.M.R. Civil Rules 52.01, 52.04.—Cantor v. Union Mut. Life Ins. Co., 547 S.W.2d 220.—Insurance 3567.

Mo.App. 1964. Term "necessary party" has been defined as persons who are so vitally interested in object or subject matter of controversy that a valid judgment, adjudicating subject matter, cannot be effectively rendered without their presence as parties.—Shepherd v. Department of Revenue, 377 S.W.2d 525.—Parties 18, 29.

Mo.App. 1943. Where boat was seized under writ of replevin issued on petition of mortgagee and other creditors of owner of boat filed counterclaim asserting a prior lien against replevied boat and seeking foreclosure thereof, owner of boat was a "necessary party" and court had no jurisdiction to render judgment establishing priority of creditors' lien and ordering its foreclosure until court had acquired jurisdiction of owner by service of proper process.—McCreary v. Bates, 176 S.W.2d 298, 238 Mo.App. 30.—Replev 22.

Mo.App. 1942. Purchaser at execution sale was a "necessary party" to a proceeding to set sale aside.—State ex rel. Weber v. McLaughlin, 157 S.W.2d 800.—Execution 253(1).

Mo.App. 1940. Where petition in partition proceeding set out specifically the interest of a legatee to whom testator made cash bequest payable out of personalty and proceeding was tried on the theory that legatee was a defendant and his interest was fully protected in the judgment rendered, and under statute legatee could enter his appearance or be made a defendant by order of court before final judgment was rendered, and after verdict amendments would be considered as having been made if the parties tried the case on that theory, holding that legatee was not a "proper party" or "necessary party" to the action was not error. Mo.R.S.A. § 971.—Scoggin v. Goff, 137 S.W.2d 694.—Partit 46.1, 46.2.

Mo.App. 1939. A company which formerly owned interest in notes secured by deed of trust and was a party in suit for enforcement of taxes, but had parted with such interest, was not a "necessary party" to motion to quash execution obtained by assignee of judgment rendered in the suit.—State ex rel. Gilkison v. Andrews, 133 S.W.2d 695.—Execution 163.

Mo.App. 1939. In a suit by a subcontractor to establish a mechanic's lien, original contractor is a "necessary party." Mo.St. Ann. § 3165, p. 4996.—Quigley v. William M. Rideout & Co., 127 S.W.2d 37.

Mo.App. 1938. A legally organized school district was a "necessary party" to quo warranto proceedings brought to determine that the school district was exercising jurisdiction over territory of another school district attempted to be annexed to

the first district by extension of its boundary lines.—*State ex Inf. Prosecuting Attorney ex rel. Hutsell v. Chipley*, 116 S.W.2d 140, 233 Mo.App. 61.—*Quo W 39*.

Mo.App. 1937. Under will creating an estate in land for years with directions that land be sold at termination thereof by executor and proceeds divided among certain beneficiaries, administratrix who succeeded executor was not a “necessary party” to suit by beneficiary who had elected, by bringing suit in partition, to reconvert realty from personalty into realty after other beneficiary had also made such an election, since administratrix never had any vested title to land but only a naked right to sell.—*Holmes v. Scott*, 105 S.W.2d 966, 231 Mo.App. 690.—*Ex & Ad 439*.

Mont. 1940. On appeal from order giving instructions to a water commissioner appointed by the court, the water commissioner was a “necessary party”. *Rev.Codes 1935, §§ 7136–7159*.—*Quigley v. McIntosh*, 103 P.2d 1067, 110 Mont. 495.—*Waters 133*.

Neb. 2000. A “necessary party,” or indispensable party, whose presence as party is required under declaratory judgment statute, is one who has an interest in the controversy to an extent that such party’s absence from the proceedings prevents the court from making a final determination concerning the controversy without affecting such party’s interest. *Neb.Rev.St. § 25–21,159*.—*Dunn v. Daub*, 611 N.W.2d 97, 259 Neb. 559.—*Decl Judgm 293.1*.

Neb. 2000. City was a “necessary party” under declaratory judgment statute in action in which city resident sought declaratory and injunctive relief, on basis that city had improperly continued employment of assistant fire chief past his 62nd birthday, in violation of city ordinance, and thus, absence of city as a party deprived district court of jurisdiction to determine controversy. *Neb.Rev.St. § 25–21,159*.—*Dunn v. Daub*, 611 N.W.2d 97, 259 Neb. 559.—*Decl Judgm 302.1*.

Neb. 1998. “Necessary party” or “indispensable party” to suit is one who has interest in controversy to extent that such party’s absence from proceedings prevents court from making final determination concerning controversy without affecting such party’s interest.—*Taylor Oil Co., Inc. v. Retikis*, 575 N.W.2d 870, 254 Neb. 275.—*Parties 18, 29*.

Neb. 1998. “Indispensable party,” or “necessary party,” is one who has interest in controversy to extent that such party’s absence from proceedings prevents court from making final determination concerning controversy without affecting that party’s interest.—*Hall County Public Defenders Organization (HCPDO) v. County of Hall*, 571 N.W.2d 789, 253 Neb. 763.—*Parties 18, 29*.

Neb. 1997. “Indispensable party” or “necessary party” is one who has interest in controversy to an extent that party’s absence from proceedings prevents court from making final determination concerning controversy without affecting that party’s interest.—*Battle Creek State Bank v. Preusker*, 571 N.W.2d 294, 253 Neb. 502.—*Parties 18, 29*.

Neb. 1995. “Necessary party” is person who may be compelled to respond to prayer of plaintiff’s petition and, where there is nothing such person is called upon to do or can be compelled to do as duty, person is not “necessary party.”—*Calabro v. City of Omaha*, 531 N.W.2d 541, 247 Neb. 955.—*Parties 18*.

Neb. 1995. “Indispensable party” or “necessary party” to suit is one who has interest in controversy to extent that such party’s absence from proceedings prevents court from making final determination concerning controversy without affecting such party’s interest.—*Calabro v. City of Omaha*, 531 N.W.2d 541, 247 Neb. 955.—*Parties 18, 29*.

Neb. 1995. A “necessary party” is one who may be compelled to respond to prayer of plaintiff’s petition, and where there is nothing such a one is called upon to do, or can be compelled to do as duty, one is not necessary party.—*State ex rel. Stenberg v. Murphy*, 527 N.W.2d 185, 247 Neb. 358.—*Parties 29*.

Neb. 1994. “Indispensable party” or “necessary party” is one who has interest in controversy to such an extent that party’s absence from proceedings prevents court from making final determination concerning controversy without affecting such party’s interest.—*Hoiengs v. County of Adams*, 516 N.W.2d 223, 245 Neb. 877, appeal after remand 574 N.W.2d 498, 254 Neb. 64, certiorari denied *Hoiengs v. Adams County*, 119 S.Ct. 339, 525 U.S. 931, 142 L.Ed.2d 280.—*Parties 18, 29*.

Neb. 1993. In order for person to be “necessary party” to cause of action, it must appear that person may be compelled to respond to prayer of plaintiff’s petition and, where there is nothing such person is called upon to do, or can be compelled to do as duty, person is not necessary party.—*Wats Marketing of America, Inc. v. Boehm*, 494 N.W.2d 527, 242 Neb. 252.—*Parties 29*.

Neb. 1968. One who claims title to or right to possession of property replevied, adversely to plaintiff, is not “necessary party.”—*Coomes v. Drinkwater*, 162 N.W.2d 533, 183 Neb. 564.—*Replev 22*.

Neb. 1956. In action by resident and elector of allegedly dissolved school district to enjoin school board of successor district, county treasurer, county superintendent, county assessor, and county clerk from assessing and levying taxes on elector’s land for support of schools in successor district on ground that statute pertaining to dissolution of school districts was unconstitutional, State Superintendent of Public Instruction would have been a “proper party” if made a party but was not a “necessary party”, in view of fact that the statute was unconstitutional. *R.S.Supp.1953, § 79-420*.—*Schutte v. Schmitt*, 75 N.W.2d 656, 162 Neb. 162.—*Schools 111*.

Neb. 1946. The county attorney of county wherein Attorney General filed petition to remove trustee of testamentary public charitable trust was not “necessary party” to proceeding, in view of statute giving Attorney General same powers in various counties as county attorneys thereof. *R.S.*

1943, §§ 30-1801 to 30-1805, 84-204.—*In re Grblny's Estate*, 22 N.W.2d 488, 147 Neb. 117.—Char 45(1).

Neb. 1943. Lessor claiming no interest adverse to state in quo warranto action to prevent building and loan association from unlawfully continuing to hold lawfully acquired 99-year leasehold was not a "necessary party" to complete settlement of question involved therein so as to extend court's jurisdiction in quo warranto action to a determination of issues between association and lessor as to existence of obligations of lease and rights and liabilities of parties thereunder. *Comp.St.1929*, §§ 20-317, 20-323, 20-21,112 to 20-21,139.—*State ex rel. Johnson v. Conservative Sav. & Loan Ass'n*, 11 N.W.2d 89, 143 Neb. 805.—*Quo W 39*.

Neb. 1941. In error proceeding in district court brought by testator's widow, who elected to take against will, to review a final order of county court awarding to principal legatee all of net profits realized from testator's store while it was operated by executor pending settlement of the estate, where it did not appear that executor had turned the net profits over to principal legatee, executor had an interest that might be affected by a modification or reversal of order of county court, and it was a "necessary party" to the error proceeding. *Comp. St.1929*, §§ 20-1901 to 20-1908.—*In re Berg's Estate*, 296 N.W. 460, 139 Neb. 99.—*Courts 202(5)*.

Neb. 1938. A defendant, who had been impleaded with his wife in suit to foreclose a mortgage, was a "necessary party" to appeal from a judgment of foreclosure and sale. *Comp.St.1929*, §§ 20-317, 20-318.—*Donisthorpe v. Vavra*, 278 N.W. 151, 134 Neb. 157.—*Mtg 573*.

Neb. 1933. In employee's action on individual certificate issued under employer's group life policy, employer held not "necessary party."—*Hamblin v. Equitable Life Assur. Soc. of U.S.*, 248 N.W. 397, 124 Neb. 841.—*Insurance 3567*.

Nev. 1992. Owner of interest in real property subject to mechanic's lien when judicial foreclosure proceeding is commenced is "necessary party," and failure to name such necessary party leaves that property owner's interest unaffected by foreclosure.—*Pickett v. Cortanche Const., Inc.*, 836 P.2d 42, 108 Nev. 422.—*Mech Liens 263(1)*.

Nev. 1940. An action by judgment creditor's attorney to enforce attorney's lien could not be maintained against judgment debtor alone, but judgment creditor was a "necessary party," since issues involved determination of judgment creditor's liability to the attorney and the amount thereof. *Comp.Laws*, § 8923.—*Berrum v. Georgetta*, 98 P.2d 479, 60 Nev. 1.—*Atty & C 192(2)*.

N.J.Err. & App. 1942. Where it was alleged that local trust company had been designated as custodian of the shares delivered to voting trustees, but it was not alleged that trust company proposed or threatened to take any action with regard to such shares, trust company was not a "necessary party" to dispute between parties to voting trust agreement and, in the absence of any charge to the

contrary, court would assume that trust company would properly perform its duties.—*Carnegie v. Laughlin*, 28 A.2d 506, 132 N.J.Eq. 443.—*Corp 198.1(1)*.

N.J.Err. & App. 1942. In suit involving efficacy of nonassignability clause of life insurance policy, the insurer was a "necessary party" so that nonjoinder of the insurer required reversal of decree.—*Chelsea-Wheeler Coal Co. v. Marvin*, 28 A.2d 505, 132 N.J.Eq. 462.—*App & E 1036(3)*.

N.J.Err. & App. 1940. Holder of mortgage participation certificate which by its terms assigned to holder a portion of the mortgage debt was a "proper" if not a "necessary party" to action against officers of mortgage debtor to enforce liability of officers for loans to stockholders notwithstanding in debtor's reorganization proceeding holder surrendered her certificate and took a new certificate. *N.J.S.A. 14:8-10*; *Bankr.Act § 77B*, 11 U.S.C.A. § 207.—*Cole v. Brandle*, 11 A.2d 255, 127 N.J.Eq. 31, 129 A.L.R. 1250.—*Bankr 3570*.

N.J.Err. & App. 1940. In action to enforce liability of officers for loans to stockholders of debtor corporation, bank which in proceeding for reorganization of the debtor corporation became assignee of bond and mortgage executed by the debtor and to which mortgage participation certificate holders assigned their claims, and which had executed a declaration of trust in favor of such holders, was a "proper" if not a "necessary party." *N.J.S.A. 14:8-10*; *Bankr.Act § 77B*, 11 U.S.C.A. § 207.—*Cole v. Brandle*, 11 A.2d 255, 127 N.J.Eq. 31, 129 A.L.R. 1250.—*Bankr 3570*.

N.J.Super.A.D. 2001. Transferee of property in alleged violation of the Uniform Fraudulent Transfer Act was a "necessary party" to a suit to set aside the transfers; the transferee's property could be affected by the outcome of the litigation. *N.J.S.A. 25:2-29*, 25:2-30; *R. 4:28-1*.—*New Jersey Dept. of Environmental Protection v. Caldeira*, 768 A.2d 782, 338 N.J.Super. 203, appeal granted 782 A.2d 417, 169 N.J. 597, reversed State Dept. of Environmental Protection v. Caldeira, 794 A.2d 156, 171 N.J. 404.—*Fraud Conv 255(4)*.

N.J.Sup. 1942. Where loan secured to purchase automobile had been paid in full, the bank that had financed the purchase was not a "necessary party" to action by purchaser on policy insuring against collision damage to the automobile.—*Parodi v. Universal Ins. Co.*, 26 A.2d 557, 128 N.J.L. 433.—*Insurance 3567*.

N.J.Sup. 1940. The director of revenue and finance of the city of Newark was not a "necessary party" to suit by attorneys who took acknowledgments of the director to tax certificates made by him, for fees allowed by statute for taking acknowledgments, since the fees to which attorneys as acknowledging officers were entitled were required to be paid into the city treasury and the director was in no sense liable for them. *N.J.S.A. 22:4-12*, 54:5-46.—*Samson v. City of Newark*, 15 A.2d 452, 125 N.J.L. 221.—*Mun Corp 1027*.

N.J.Super.Ch. 1965. A "necessary party" is one who ought to be joined if complete relief is to be accorded those already parties to the litigation.—*Insurance Co. of North America v. Allied Crude Vegetable Oil Refining Corp.*, 215 A.2d 579, 89 N.J.Super. 518.—Parties 18, 29.

N.J.Ch. 1947. The personal representative of a deceased nonresident cotenant was not a "necessary party" to a suit for partition wherein it was sought to charge deceased cotenant's share of the proceeds of sale with amount of his alleged defalcations with respect to rent collections. N.J.S. 2:71-66.—*Creech v. McVaugh*, 54 A.2d 443, 140 N.J.Eq. 272.—Ex & Ad 439.

N.J.Ch. 1945. Assignee of real estate mortgages, who in turn assigned them to defendant, was a "necessary party" to suit by assignor in which it was contended that mortgages were assigned for sole purpose of securing new loans but that defendant fraudulently held them as security for prior loans as well.—*Cobb v. Chatham Trust Co.*, 41 A.2d 137, 136 N.J.Eq. 191.—Mtg 265.

N.J.Ch. 1942. A widow's child was not a "necessary party" or "proper party" to widow's suit to establish a partnership with defendant in a poultry business formerly conducted by widow's husband and defendant.—*Laterra v. Laterra*, 28 A.2d 71, 132 N.J.Eq. 242, modified 34 A.2d 289, 134 N.J.Eq. 162.—Partners 115.

N.J.Ch. 1942. The appointment of a receiver for an insolvent national bank does not dissolve the corporate existence of the bank, and a suit which does not seek to establish a lien or preference upon or otherwise reach the receivership assets or interfere with the receiver's possession thereof, or to compel any action on receiver's part, may, notwithstanding his appointment, be brought against the bank alone, since receiver is not a "necessary party" thereto. 12 U.S.C.A. § 21 et seq.—*In re Freeman*, 27 A.2d 201, 132 N.J.Eq. 135.—Banks 276, 287(4).

N.J.Ch. 1942. The guardian of a lunatic having life estate in realty under will is "necessary party" to remaindermen's suit to foreclose tax lien on realty after purchase of tax sale certificate from township by remaindermen's agent. N.J.S.A. 54:5-1 et seq.—*Di Bologna v. Earl*, 23 A.2d 791, 130 N.J.Eq. 571.—Towns 59.

N.J.Ch. 1942. Even where suit is instituted by one or more individuals alleging a special interest in the performance of a public trust, the attorney general is a "necessary party".—*Woulfe v. Associated Realities Corp.*, 23 A.2d 399, 130 N.J.Eq. 519.—Atty Gen 9.

N.J.Ch. 1940. In suit by surety company which had given bond to secure a manufacturing company's performance of a contract with the government, for specific performance of a covenant of third persons to deposit collateral with the surety company in event the surety company should deem it necessary, in order to comply with regulation of the insurance department, to set aside a loss reserve to cover any unadjusted claim under the bond, the United States was not a "necessary par-

ty".—*Standard Surety & Casualty Co. of New York v. Caravel Industries Corp.*, 15 A.2d 258, 128 N.J.Eq. 104.—U S 135.

N.J.Ch. 1939. Under grant by the State Board of Commerce and Navigation to the City of Bayonne, of land under water in front of lots owned by the city, for public uses, or for docks, etc., with provision for reverter in event of conveyance of the lots by city, or an unauthorized use thereof, the interest which city acquired was an "estate upon limitation" and hence Attorney General was not a "necessary party" to a suit for removal of cloud upon title, instituted by one to whom city had sold two of the lots.—*Pamrapau Corp. v. City of Bayonne*, 8 A.2d 835, 126 N.J.Eq. 479, motion denied 8 A.2d 908, 126 N.J.Eq. 478, affirmed 12 A.2d 860, 127 N.J.Eq. 340, motion denied 17 A.2d 544, 129 N.J.Eq. 3, affirmed 19 A.2d 877, 129 N.J.Eq. 586, affirmed 21 A.2d 863, 130 N.J.Eq. 240.—*Nav Wat* 37(4); *Quiet T* 30(3).

N.J.Ch. 1939. A mortgagee may join, as defendants, in one suit in equity, successive grantees who have assumed payment of the mortgage, to establish their liability to him, or he may proceed against the last assuming grantee alone, and the original obligor is not a "necessary party".—*Meyer v. Supinski*, 7 A.2d 277, 125 N.J.Eq. 584.—Mtg 292(5).

N.J.Ch. 1939. Where, in a suit for an accounting, by one of two residuary legatees against the executor and executrix of one who had been an executor under a will by which the complainant was made one of the two residuary legatees, it appeared from the evidence that a definite sum was due to the complainant, the other residuary legatee was not a "necessary party".—*Melosh v. Melosh*, 6 A.2d 472, 125 N.J.Eq. 486.—Ex & Ad 473(2).

N.J.Ch. 1937. Where chattel mortgagee sells some of the notes and assigns entire legal interest in mortgage to purchaser, mortgagee would be a "necessary party" in suit to foreclose mortgage.—*Abrams v. Brown*, 195 A. 810, 122 N.J.Eq. 563.—*Chat Mtg* 275.

N.J.Ch. 1936. Person whose interest has existed at commencement of suit is a "necessary party," and will not be bound by proceedings unless he is made a party to suit.—*Palisade Gardens v. Grosch*, 185 A. 27, 120 N.J.Eq. 294, affirmed 189 A. 622, 121 N.J.Eq. 240.—*Judgm* 707.

N.J.Ch. 1934. One claiming assets of national bank whose functions have been suspended may resort to state court for adjudication of claim, and conservator of bank is proper but not "necessary party" to suit. *Bank Conservation Act*, 12 U.S.C.A. §§ 201-211.—*Prudden & Co. v. First Nat. Bank*, 170 A. 860, 115 N.J.Eq. 365.—Banks 287(1).

N.J.Cir.Ct. 1942. A purchaser of mortgaged premises who subsequently reconveyed to his original grantor was not a "necessary party" either to an action to foreclose the mortgages or an action against the mortgagor to recover a deficiency on the bonds which had accompanied the mortgages.—*Henderson v. Weber*, 24 A.2d 508, 20 N.J.Misc. 67,

reversed 28 A.2d 90, 129 N.J.L. 59.—Mtg 427(4), 561.5.

N.M. 1949. Bank on which checks allegedly lost by payee in a game of chance were drawn was a “necessary party” to action by payee to cancel such checks and enjoin bank from cashing them, so that venue of such action was properly laid, even as against holder of checks in due course residing in another county, in county of situs of bank, since bank, had it cashed such checks, would have been liable to payee for the full amount thereof. 1941 Comp. §§ 19-501, 25-1001.—Teaver v. Miller, 208 P.2d 156, 53 N.M. 345.—Gaming 46(0.5); Venue 22(6).

N.M. 1937. In will contest by nephews and nieces of testatrix’ deceased husband and by executrix of estate of husband’s brother, claiming property inherited by testatrix from husband as his separate property, testatrix’ sister, who benefited by will, was a “necessary party.” Comp.St.1929, §§ 68-410, 154-211.—In re Morrow’s Will, 73 P.2d 1360, 41 N.M. 723.—Wills 267.

N.M. 1931. Phrase “necessary party” is used in two distinct senses. It is applied to those whose presence in the suit is essential to its maintenance and validity, and also to those who must be before the court in order that a decree may be rendered which will bind all parties interested in the land and under which a sale may be effected which will transfer the title thereto.—Mann v. Whitely, 6 P.2d 468, 36 N.M. 1.

N.Y. 1969. Power Authority, whose advice as to noninterference with Niagara project was condition precedent to conveyance of submerged public lands, was not “necessary party” to proceeding wherein prospective purchasers sought judgment directing Commissioner of General Services to deliver grants of certain submerged lands. Public Lands Law § 75, subd. 13; CPLR 1001.—Castaways Motel v. Schuyler, 299 N.Y.S.2d 148, 24 N.Y.2d 120, 247 N.E.2d 124, motion granted 304 N.Y.S.2d 10, 25 N.Y.2d 891, 251 N.E.2d 148, reargument granted 304 N.Y.S.2d 1031, 25 N.Y.2d 896, 251 N.E.2d 152, adhered to on reargument 306 N.Y.S.2d 692, 25 N.Y.2d 692, 254 N.E.2d 919.—Nav Wat 37(1).

N.Y. 1944. In suit to define and settle, as between a private suitor and the state, conflicting claims to water rights, the state is a “necessary party.”—Niagara Falls Power Co. v. White, 55 N.E.2d 742, 292 N.Y. 472.—States 203.

N.Y. 1939. A foreign government does not become a “necessary party” to an action, unless issues raised in action by the pleadings of the parties in the action cannot be decided without presence of foreign government.—Lamont v. Travelers Ins. Co., 24 N.E.2d 81, 281 N.Y. 362, reargument denied 26 N.E.2d 808, 282 N.Y. 676, motion denied 29 N.E.2d 939, 284 N.Y. 633.—Intern Law 10.43.

N.Y. 1938. A statutory cause of action for death is not a general asset of deceased’s estate, notwithstanding that administrator is a “necessary party” plaintiff as a matter of form. Decedent’s Estate Law, § 130.—Central New York Coach Lines v.

Syracuse Herald Co., 13 N.E.2d 598, 277 N.Y. 110.—Ex & Ad 51.

N.Y.A.D. 1 Dept. 1972. Inasmuch as Secretary of State was a “necessary party” to proceeding to annul corporate merger, venue was properly in Albany County, whether the proceeding was a special proceeding or a proceeding against body or officer. Business Corporation Law § 106; CPLR 401 et seq., 506(b), 7801 et seq., 7804(b).—Ryback v. Lomenzo, 330 N.Y.S.2d 76, 38 A.D.2d 915.—Venue 22(9).

N.Y.A.D. 1 Dept. 1940. A child was not a “necessary party” to support proceedings instituted by her mother in the Domestic Relations Court, and an order denying the petition in so far as it demanded support for the child on the ground that the mother had failed to prove that her husband was the father of the child was not binding on the child, nor would the child be bound by any order made in husband’s proceedings for an order directing the clerk of the Domestic Relations Court to issue a notice to the department of health concerning the determination of parentage. Judiciary Law, § 254; Laws 1933, c. 482, § 91; Const. art. 6, § 18.—Melis v. Department of Health of City of New York, 24 N.Y.S.2d 51, 260 A.D. 772.—Child 30, 68.

N.Y.A.D. 1 Dept. 1940. A paternity proceeding is brought to enforce a statutory duty imposed on the father of a natural child to whom the father at common law owed no duty, and the child is not a “necessary party” to the proceeding nor is the husband of the mother. Inferior Criminal Courts Act, § 64, subd. 1.—Melis v. Department of Health of City of New York, 24 N.Y.S.2d 51, 260 A.D. 772.—Child 30.

N.Y.A.D. 1 Dept. 1939. An individual who was a partner at time of dissolution would be a “proper” if not a “necessary party” to an accounting by liquidating partners, since ordinarily all partners are “necessary parties” to an action for a partnership accounting.—Leonard v. Cammann, 13 N.Y.S.2d 244, 257 A.D. 387.—Partners 322.

N.Y.A.D. 1 Dept. 1938. In action for voluntary accounting for moneys received by plaintiffs from Mexican government, the Mexican government was a “necessary party,” and upon its refusal as sovereign state to submit to jurisdiction of court, court properly dismissed action, where complaint demanded adjudication whether Mexican government claiming ownership had an interest in funds, and party claiming funds demanded appointment of a receiver.—Lamont v. Travelers Ins. Co., 5 N.Y.S.2d 295, 254 A.D. 511, reversed 24 N.E.2d 81, 281 N.Y. 362, reargument denied 26 N.E.2d 808, 282 N.Y. 676, motion denied 29 N.E.2d 939, 284 N.Y. 633.—Intern Law 10.33.

N.Y.A.D. 1 Dept. 1938. An action for false representations by a bank in the sale of its stock is properly brought against the bank in its own name after the appointment of a receiver, the receiver is not a “necessary party,” and the action is not an action against a receiver of an insolvent debtor within three-year statute of limitations. Civil Prac-

tice Act, § 49, subd. 5.—Federal Debenture Co. v. Harriman Nat. Bank & Trust Co. of City of New York, 5 N.Y.S.2d 47, 254 A.D. 362, reargument denied 6 N.Y.S.2d 443, 255 A.D. 701.—Abate & R 44; Lim of Act 32(1).

N.Y.A.D. 1 Dept. 1934. Defendant, who filed affidavit in support of other defendants' motion requiring plaintiff to give security for costs, but who was not joined as moving party in notice upon which motion was made, *held* not "necessary party" to plaintiff's appeal from order granting motion, since such defendant was not entitled to benefit of order (Civil Practice Act, §§ 1522, 1523).—Bachman v. Hausman, 271 N.Y.S. 534, 241 A.D. 153.—App & E 327(2).

N.Y.A.D. 2 Dept. 1992. Executive committee of political party's county committee was "necessary party" in action challenging propriety of executive committee actions in designating candidate. McKinney's CPLR 1001(a).—Schaffer v. Withers, 589 N.Y.S.2d 518, 186 A.D.2d 836.—Elections 154(9).

N.Y.A.D. 2 Dept. 1974. Teacher, who was selected to fill one of remaining full-time positions and who had less seniority within the position than did petitioner, was a "necessary party" to Article 78 proceeding to challenge action of board of education in terminating petitioner's full-time position as being in violation of statutory provision that services of teacher having least seniority in system within tenure of the position abolished shall be discontinued, and compulsory joinder was required. Education Law §§ 2510, 2510, subd. 2.—Skliar v. Board of Ed., Union Free School Dist. No. 23, Town of Hempstead, 358 N.Y.S.2d 208, 45 A.D.2d 1012.—Schools 147.44.

N.Y.A.D. 2 Dept. 1969. The public service commission was not a "necessary party" to Article 78 proceeding to restore telephone service which had been terminated for failure of subscribers to telephone company's sponsored recorded announcement service to comply with tariff requiring individual subscriber to state his name and address on the recording. CPLR 3211(a), par. 10; CPLR 1001(a), 7801 et seq.—Figari v. New York Tel. Co., 303 N.Y.S.2d 245, 32 A.D.2d 434.—Mand 151(2).

N.Y.A.D. 2 Dept. 1939. In proceeding by Municipal Housing Authority for condemnation of real property, mortgagee of the premises was a "necessary party." Unconsol.Laws, § 2320.—Municipal Housing Authority for City of Yonkers v. Phipps, 13 N.Y.S.2d 640, 257 A.D. 1009.—Em Dom 177.

N.Y.A.D. 2 Dept. 1939. In action in nature of action of interpleader to determine rights of adverse claimant to a sum of money in bank, the adverse claimant was a "necessary party" and the action was maintainable in equity. Rules of Civil Practice, rule 106, subd. 5; Banking Law, § 239, subd. 3.—Sasanow v. Williamsburg Sav. Bank, 9 N.Y.S.2d 782, 256 A.D. 928, motion granted 10 N.Y.S.2d 673, 256 A.D. 922.—Interpl 19.

N.Y.A.D. 2 Dept. 1938. Upon motion for an order vacating an order of discontinuance and to

revive certiorari proceedings, notice should be given to an adverse party who has been made a party to the proceedings in the first instance but who has failed to file a return, prior to the order of discontinuance; such party being a "proper," if not a "necessary party."—Incorporated Village of Island Park v. Howard, 8 N.Y.S.2d 659, 255 A.D. 1007, appeal and reargument denied 9 N.Y.S.2d 582, 256 A.D. 819, appeal dismissed 21 N.E.2d 195, 280 N.Y. 686.—Cert 60.

N.Y.A.D. 2 Dept. 1937. Compelling plaintiff in personal injury action to amend his complaint to join insurer as party plaintiff was improper, since insurer was not "necessary party" to action, in view of rule that cause of action to recover damages for personal injury cannot be transferred and cannot be split.—Kurowski v. Shapiro, 299 N.Y.S. 159, 252 A.D. 795.—Parties 95(1).

N.Y.A.D. 3 Dept. 1996. Definition of "necessary party" for joinder purposes is limited to cases where a determination of court will adversely affect rights of nonparties. McKinney's CPLR 1001(a).—Schulz v. De Santis, 638 N.Y.S.2d 809, 218 A.D.2d 256.—Parties 18, 29.

N.Y.A.D. 3 Dept. 1983. Party nominee as candidate for office of village trustee was a "necessary party" to proceeding for invalidating the certificate of nomination and directing reconvening of the caucus and where nominee was improperly served with show cause order the trial court was without jurisdiction to entertain the proceeding. McKinney's CPLR 1001(a), McKinney's Election Law § 16-102.—Sahler v. Callahan, 460 N.Y.S.2d 643, 92 A.D.2d 976.—Elections 154(9).

N.Y.A.D. 3 Dept. 1942. The Attorney General and district attorney are the proper defendants in an action to test the constitutionality of a statute enforceable by them, but the State Commissioner of Health entrusted with duty of enforcing the Sanitary Code is a "proper party" and the only "necessary party" in an action to test the constitutionality of a provision of that code. Public Health Law, §§ 2-b, 2-c, 4.—Aerated Products Co. of Buffalo v. Godfrey, 35 N.Y.S.2d 124, 263 A.D. 685, reversed 48 N.E.2d 275, 290 N.Y. 92.—Decl Judgm 303.

N.Y.A.D. 3 Dept. 1939. In taxpayer's action to enjoin the city of Plattsburgh from proceeding with the construction of a municipal electric power plant or from issuing its bonds, on ground that incurring of proposed indebtedness would violate city's charter and constitution by increasing debt limit beyond the permissible amount, the federal administrator of public works with whom arrangements had been made by city officials to finance the construction was not a "necessary party." General Municipal Law, § 51; § 360 et seq.; Laws 1933, Ex.Sess., c. 782; Loc.Laws 1936, p. 230, No. 1; Const. art. 8, § 10, now Const.1938, art. 8, § 4.—New York State Elec. & Gas Corp. v. City of Plattsburgh, 12 N.Y.S.2d 318, 256 A.D. 732, 257 A.D. 1022, modified 24 N.E.2d 122, 281 N.Y. 450, reargument denied 26 N.E.2d 812, 282 N.Y. 682.—Mun Corp 1000(4).

N.Y.A.D. 4 Dept. 1988. Town planning board was "necessary party" in proceeding brought by landowner against town for review of board's decision denying him a special permit. McKinney's CPLR 1001(a).—Watt v. Town of Gaines, 529 N.Y.S.2d 625, 140 A.D.2d 947, appeal dismissed in part, denied in part 534 N.Y.S.2d 936, 72 N.Y.2d 1040, 531 N.E.2d 656.—Zoning 582.1.

N.Y.A.D. 4 Dept. 1942. In a proceeding to compel the Board of Elections of Onondaga County to declare petitioner elected to the office of supervisor of the Town of Lafayette, the board of canvassers of the county was a "necessary party", and the joining of the secretary of the board as a party was not sufficient to make the board itself a party. Election Law, § 330.—Application of Crowe, 32 N.Y.S.2d 398, 263 A.D. 935.—Mand 151(2).

N.Y.A.D. 4 Dept. 1939. In property owner's proceeding against adjoining landowner who constructed building on his land, and against city and certain city officers to require compliance with building code of the city, mortgagee which loaned money to landowner to finance construction of the building and which contended that its mortgage would be impaired if building were required to be altered to comply with building code provisions, was not a "necessary party".—Cortellini v. City of Niagara Falls, 14 N.Y.S.2d 910, 258 A.D. 778.—Mand 152.

N.Y.Sup. 1996. Federal Highway Administration (FHWA) was not "necessary party" in taxpayer's action which sought declaratory judgment that waiver by Department of Transportation (DOT) of FHWA billing credits due state without obtaining legislative authorization constituted illegal payment under statute and State Constitution and also sought injunction directing DOT to recover billing credits released to FHWA, where taxpayers did not seek directly to recover money from federal government. McKinney's CPLR 1001(a).—Mylod v. Pataki, 654 N.Y.S.2d 946, 171 Misc.2d 556.—Decl Judgm 304.

N.Y.Sup. 1954. In proceeding by receiver in sequestration (1) to require corporate defendant to pay to receiver an amount corporate defendant allegedly owed to individual defendant, (2) to have individual defendant adjudged beneficial owner of corporation's stock and (3) to have receiver adjudged entitled to vote such stock, person to whom stock had allegedly been pledged was not a "necessary party". Civil Practice Act, § 193, subd. 1.—Presberg v. Presberg, 128 N.Y.S.2d 612, 205 Misc. 653.—Sequest 16.

N.Y.Sup. 1952. Maker of notes was not "necessary party" to action by assignee of accommodation indorser against payee for whom notes were endorsed, for damages sustained when accommodation indorser was compelled to pay notes to purchaser of value after maker and payee failed to meet their obligations. Civil Practice Act, §§ 193, 194.—Vetri v. Johnston, 112 N.Y.S.2d 822.—Bills & N 262.

N.Y.Sup. 1950. Where plaintiff sought to compel defendants to respect interest of respective

parties established by right of way between their adjoining premises and to desist from interfering with use of driveway, and mortgagee of defendants' realty recognized right of way and mortgage was subject to it, mortgagee was not a "necessary party" to the action. Civil Practice Act, § 193.—Bruno v. Picchi, 99 N.Y.S.2d 207.—Ease 61(7).

N.Y.Sup. 1948. Petition to have stricken from records of Board of Elections of New York City designation of a certain person for Republican nomination for office of assemblyman for such district and designation and acceptance of another person for nomination, would be dismissed because of jurisdictional defect, where nominee whose name was sought to be removed was not served with the papers, and service was had only on a member of the committee on vacancies, since nominee was a "necessary party".—Application of Murphy, 82 N.Y.S.2d 239.—Elections 154(8).

N.Y.Sup. 1948. In proceeding by town for judgment declaring title to property in town free of all liens including restrictive covenants of record, defendant who had executed a contract to purchase the property, and whose obligations would be directly affected by the question to be determined, was a "necessary party".—Town of Harrison v. Campagna, 80 N.Y.S.2d 462.—Decl Judgm 296.

N.Y.Sup. 1947. In action against City of New York for alleged malpractice of physician in the city's employ, the physician is not a "necessary party". General Municipal Law, §§ 50-d, 50-e.—Petition of Polk, 71 N.Y.S.2d 294, 188 Misc. 727.—Mun Corp 742(2).

N.Y.Sup. 1946. In proceeding by resident of a hamlet to compel superintendent of highways of town to record certain street as a public highway and maintain that street, the town was a "necessary party" to proceeding, in absence of any authority in superintendent to act for town or bind it, or to accept streets for dedication without consent of town board. Highway Law § 171.—In re Frahm, 66 N.Y.S.2d 323.—Mand 151(2).

N.Y.Sup. 1943. The State is a "necessary party" to an action seeking to prevent the collection of an equitable rental for the diversion of waters from the Niagara river, and since action would be coercive in its result, and was an action against the State, it could not be sustained. Laws 1943, c. 46.—Niagara Falls Power Co. v. Halpin, 45 N.Y.S.2d 421, 181 Misc. 13, reversed 45 N.Y.S.2d 426, 267 A.D. 236, 267 A.D. 853, appeal granted 47 N.Y.S.2d 281, 267 A.D. 853, affirmed 56 N.E.2d 117, 292 N.Y. 705.—States 191.10.

N.Y.Sup. 1943. Where entire proceeds of insurance policies, taken out for account of foreign government by corporation operating insured vessel, was paid over to it by corporation after commencement of action against to impress trust on such proceeds, such government was not "necessary party" to action.—Aktieselskabet Dampskibsselskabet Vesterhavet v. W.A. Kirk & Co., 44 N.Y.S.2d 6, 180 Misc. 979, affirmed 56 N.Y.S.2d 537, 269 A.D. 840, appeal granted 58 N.Y.S.2d 342, 269 A.D. 936, appeal dismissed 66 N.E.2d 579, 295 N.Y. 794.

N.Y.Sup. 1942. A person injured on leased premises, although a "proper party", was not a "necessary party" in action for declaratory judgment by landlord and tenant to adjudicate that insurer was bound under public liability policy.—*Spiewok v. U.S. Cas. Co.*, 34 N.Y.S.2d 63.—Decl Judgm 295.

N.Y.Sup. 1940. In taxpayer's action to declare invalid an operating contract between city and private corporation, whereby private corporation undertook to operate a foreign trade zone theretofore operated by city under a federal grant obtained from Foreign Trade Zones Board, neither the United States nor the Foreign Trade Zones Board was a "necessary party" or "proper party", since federal grant to city to operate and maintain the zone was in no way involved. General Municipal Law, § 51; 19 U.S.C.A. § 81a et seq., and §§ 81g, 81q.—*American Dock Co. v. City of New York*, 21 N.Y.S.2d 943, 174 Misc. 813, affirmed 26 N.Y.S.2d 704, 261 A.D. 1063, affirmed 36 N.E.2d 696, 286 N.Y. 658.

N.Y.Sup. 1940. The mayor of the village of Victor was a "necessary party" to taxpayer's certiorari proceeding to review the annual assessment roll of the village. Civil Practice Act, § 1283 et seq.; Tax Law, § 290 et seq.—*People ex rel. Lehigh Valley Rail Way Co. v. Clover*, 19 N.Y.S.2d 865, 174 Misc. 44.—Mun Corp 974(2).

N.Y.Sup. 1938. In action to restrain city from proceeding with construction of municipal electric light and power plant under grant and loan from federal government, Federal Administrator of Public Works was not a "necessary party" on ground that, having acted on program for proposed construction, his rights were prejudiced by action to restrain its continuance where primarily action was to restrain city from entering upon a plan of construction expense of which would exceed constitutional debt limit. National Industrial Recovery Act, 48 Stat. 195.—*New York State Elec. & Gas Corp. v. City of Plattsburg*, 6 N.Y.S.2d 419, 168 Misc. 597, modified 12 N.Y.S.2d 318, 256 A.D. 732, 257 A.D. 1022, modified 24 N.E.2d 122, 281 N.Y. 450, reargument denied 26 N.E.2d 812, 282 N.Y. 682.—Electricity 1.5.

N.Y.Sup.App.Term 1941. Where lease contained covenant prohibiting assignment without landlord's consent, mortgagee under mortgage made without consent of landlord who was notified that mortgage had been given was not a "necessary party" or "proper party" in summary proceedings by landlord to dispossess.—*City of New York v. Hudes*, 29 N.Y.S.2d 274, appeal denied 30 N.Y.S.2d 495, 262 A.D. 964.—Land & Ten 301(1).

N.Y.Sup.App.Term 1940. The assignment to a subsequent lienor, subsequent to the filing of plaintiffs' lien, of the moneys deposited by debtor to discharge such lien, did not have the effect of making subsequent lienor a "necessary party" to the action which plaintiffs could be compelled to bring in as a defendant.—*Teitelbaum v. Watford Estates*, 18 N.Y.S.2d 343.—Liens 22.

N.Y.Sup.App.Term 1934. Lessee, who assigned lease to third party in possession with consent of lessor who did not release lessee from his contractual obligations, held "proper party," though not "necessary party," to summary proceeding for non-payment of rent.—220-228 Brock Ave. Corp. v. Zaft, 271 N.Y.S. 133, 151 Misc. 231.—Land & Ten 301(2).

N.Y.Sup.App.Term 1932. Mortgagee of lease was not "necessary party" to landlord's summary proceeding to dispossess tenant.—*Day & Night Garage Co. v. Promin Engineering Corp.*, 258 N.Y.S. 384, 144 Misc. 106.—Land & Ten 301(1).

N.Y.Sur. 1943. A successor trustee was a "necessary party" on application for rejection of referee's report in compulsory accounting proceeding commenced before appointment of successor trustee.—*In re Luckenbach's Will*, 42 N.Y.S.2d 487, 181 Misc. 265, reversed 46 N.Y.S.2d 655, 267 A.D. 783.

N.Y.Sur. 1940. In proceeding for probate of will, a person whose claim to participation in estate would arise only by reason of a gift under the will is not a "necessary party" although by reason of his identity of interest with proponent he would be a "proper party" if he saw fit to join the proceeding and support the contentions of the proponent.—*In re Smith's Will*, 24 N.Y.S.2d 704, 175 Misc. 688.—Wills 263.

N.Y.Sur. 1940. The widow of testatrix' deceased son had no right under statute providing that where there is no surviving spouse the property of a decedent not devised shall descend and be distributed equally to and among the children and such as "legally represent" them, and hence widow was not a "necessary party" to probate proceeding and was not entitled to file objections and contest validity of testatrix' will. Decedent Estate Law, §§ 47-c, 83, subd. 5.—*In re Schmitt's Will*, 22 N.Y.S.2d 954, 175 Misc. 180.—Wills 229.

N.Y.Sur. 1939. An income beneficiary of testamentary trust was "necessary party" to accounting proceeding by executor who was also the trustee, and was therefore authorized to interpose objection to charge made to income account of penalty imposed for late payment of estate tax. Surrogate's Court Act, § 262, subd. 10.—*In re Harjes' Estate*, 10 N.Y.S.2d 627, 170 Misc. 431.—Ex & Ad 504(2).

N.Y.Sur. 1938. Under the Surrogate's Court Act, providing that in proceeding to compel executor to pay over funds in his possession citation must issue to persons interested in decedent's estate and in such funds, where testator's widow, as life tenant, was trustee for benefit of remaindermen as to realty received from testator and undisposed of on widow's death, and remaindermen and widow's executors contracted for sale of realty, assignee of contract who allegedly defaulted thereon was a "person interested" and a "necessary party" to proceeding by remaindermen to compel widow's executors to pay over proceeds received under contract. Surrogate's Court Act, § 206-a.—*In re Zollikoffer's Will*, 3 N.Y.S.2d 305, 166 Misc. 735.—Ex & Ad 472.

N.Y.Mun.Ct. 1950. Where landlord's right under Emergency Housing Law to maintain summary proceeding to recover possession of apartment was predicated on violation by tenant of substantial obligation of tenancy by delivering possession of apartment to another in violation of lease provision against assignment or subletting, tenant was a "necessary party" to such proceeding. Civil Practice Act, §§ 193, subd. 1, 1410, subd. 1; McK.Unconsol.Laws, § 8592.—*Stephen Estate, Inc. v. Kaplan*, 100 N.Y.S.2d 455, 198 Misc. 948.—*Land & Ten* 278.9(1).

N.Y.Ct.Cl. 1941. A claim against state by one of two tenants in common for damages to realty owned in common may not be dismissed because of failure to join co-tenant as party claimant, though claimant may move to bring in necessary parties, as cotenant is not "necessary party" so far as controversy between state and claimant is concerned. Civil Practice Act, §§ 192, 193; Rules of Civil Practice, rule 102.—*Slocum v. State*, 29 N.Y.S.2d 993, 177 Misc. 114.—*States* 184.32.

N.Y.City Ct. 1944. Each of two payees of bank draft, on which drawer stops payment, is "necessary party" to action against drawer for amount thereof, and payee refusing to co-operate with payee bringing action may be made party defendant in new action after dismissal of original action. Civil Practice Act, § 194.—*Trade Bank & Trust Co. v. Equitable Fire & Marine Ins. Co.*, 50 N.Y.S.2d 892, reversed 56 N.Y.S.2d 495.—*Banks* 189; *Parties* 35.

N.Y.City Ct. 1940. Where automobile covered by collision policy was damaged by alleged negligence of third party and insurer advanced money to insured under loan receipt requiring insured to refund amount received in proportion to recovery for damage from third person, such advance was a "payment" under policy, and to that extent insurer became subrogated to rights of insured and was a "necessary party" in insured's action against third party in order to prevent multiplicity of actions. Civil Practice Act, § 210.—*Scarborough v. Bartholomew*, 22 N.Y.S.2d 635, affirmed 30 N.Y.S.2d 971, 263 A.D. 765.—*Insurance* 3526(5).

N.C. 1990. Whether "proper" but not "necessary party" may be permitted to intervene is within sound discretion of trial court.—*River Birch Associates v. City of Raleigh*, 388 S.E.2d 538, 326 N.C. 100.—*Parties* 38.

N.C. 1978. Person is a "necessary party" to an action when he is so vitally interested in the controversy involved in the action that a valid judgment cannot be rendered in the action completely and finally determining the controversy without his presence as a party. G.S. § 1-57; Rules of Civil Procedure, rules 17, 19, G.S. § 1A-1.—*Booker v. Everhart*, 240 S.E.2d 360, 294 N.C. 146.—*Parties* 18, 32.

N.C. 1968. When person is so vitally interested in controversy that valid judgment cannot be rendered completely and finally determining controversy without his presence, he is a "necessary party".—*Strickland v. Hughes*, 160 S.E.2d 313, 273 N.C. 481.—*Parties* 18, 32.

N.C. 1947. One contracting to sell realty was "necessary party" to purchaser's action against brokers for alleged fraudulent misrepresentations and earnest money paid, as issues raised by defendant's denial of plaintiff's allegations of fraud could not be completely determined without vendor's presence. G.S. § 1-73.—*Lampros v. Chipley*, 45 S.E.2d 126, 228 N.C. 236.—*Brok* 106.

N.C. 1944. In action to reform a deed of conveyance on the ground that it was intended to be a trust deed, attorney who drew the papers was not a "necessary party" defendant where, if false representations were made by him to plaintiff, or attorney was acting for defendants as alleged, defendants were liable therefor.—*Kemp v. Funderburk*, 30 S.E.2d 155, 224 N.C. 353.—*Ref of Inst* 33.

N.C. 1942. An attorney, holding deed of his clients' interest in land and purchasing such land at commissioner's sale pursuant to verdict and judgment in partition proceedings, is a "necessary party" to such proceedings, unless all parties thereto ratify sale and agree to transfer of their respective interests in land to proceeds of such sale.—*Simms v. Sampson*, 20 S.E.2d 554, 221 N.C. 379.—*Partit* 46.1.

N.C. 1941. In action to recover damages and abate nuisance caused by defendant's erection of alleged spite fence on line between his lot and lot owned by plaintiff and his wife as tenants by entirety, plaintiff's wife was a desirable if not "necessary party".—*Burris v. Creech*, 17 S.E.2d 123, 220 N.C. 302.—*Hus & W* 221.

N.C. 1939. In action to recover tract of land which defendant had redeemed from mortgage foreclosure for benefit of plaintiff, defendant's wife as former owner of land adjoining plaintiff's land, on which water and sewage system and lake, for which defendant claimed an easement, were built, was a "necessary party." Code 1935, § 456.—*Ebert v. Disher*, 3 S.E.2d 301, 216 N.C. 36, on rehearing in part 5 S.E.2d 716, 216 N.C. 546.—*Eject* 45.

N.C. 1938. Where original judgment creditor had assigned judgment without recourse, the judgment creditor was not a "necessary party" to motion to recall the execution issued on the judgment and to restrain levy and sale under execution.—*Abernethy Land & Finance Co. v. First Security Trust Co.*, 196 S.E. 340, 213 N.C. 369.—*Execution* 163.

N.C. 1935. Party exercising option to purchase property held not "necessary party" to lessor's action against lessee for possession of premises leased subject to option to purchase.—*Fayetteville Independent Light Infantry v. Sanitary Laundry & Dry Cleaners*, 182 S.E. 698, 209 N.C. 14.—*Land & Ten* 300(1).

N.C. 1931. Trustee, having power to manage devised property, held "necessary party" in devisees' action to annul trust deed executed by trustee as security (C.S. § 457).—*Wiggins v. Harrell*, 156 S.E. 924, 200 N.C. 336.—*Trusts* 258.

N.C.App. 2002. The term "necessary party," for purposes of rule governing joinder of necessary

parties, embraces all persons who have a claim or material interest in the subject matter of the controversy, which interest will be directly affected by the outcome of the litigation. Rules Civ.Proc., Rule 19(b), West's N.C.G.S.A. § 1A-1.—Smith v. Barbour, 571 S.E.2d 872.—Parties 18, 29.

N.C.App. 2002. A "necessary party" is one whose presence is required for a complete determination of the claim, and is one whose interest is such that no decree can be rendered without affecting the party.—State ex rel. Pilard v. Berninger, 571 S.E.2d 836.—Parties 18, 29.

N.C.App. 2001. A "necessary party" is one whose presence is required for a complete determination of the claim, and is one whose interest is such that no decree can be rendered without affecting the party. Rules Civ.Proc., Rule 12(b)(7), G.S. § 1A-1.—Godette v. Godette, 554 S.E.2d 8, 146 N.C.App. 737.—Parties 18, 29.

N.C.App. 2001. "Necessary party" is one whose presence is required for a complete determination of the claim, and is one whose interest is such that no decree can be rendered without affecting the party.—Goodson v. Goodson, 551 S.E.2d 200, 145 N.C.App. 356.—Parties 18, 29.

N.C.App. 2000. A "necessary party" is one who is so vitally interested in the controversy that a valid judgment cannot be rendered in the action completely and finally determining the controversy without his or her presence. Rules Civ.Proc., Rule 19, G.S. § 1A-1.—Williamson v. Bullington, 534 S.E.2d 254, 139 N.C.App. 571, affirmed 544 S.E.2d 221, 353 N.C. 363.—Parties 25, 29.

N.C.App. 1999. A "necessary party" is one who is so vitally interested in the controversy that a valid judgment cannot be rendered in the action completely and finally determining the controversy without his presence; however, a "proper party" is one whose interest may be affected by a decree, but whose presence is not essential in order for the court to adjudicate the rights of others. Rules Civ.Proc., Rule 19, G.S. § 1A-1.—Karnier v. Roy White Flowers, Inc., 518 S.E.2d 563, 134 N.C.App. 645, reversed in part 527 S.E.2d 40, 351 N.C. 433.—Parties 14, 18, 25, 29.

N.C.App. 1997. Person is "necessary party" to declaratory judgment action when he is so vitally interested in controversy involved that valid judgment cannot be rendered in action completely and finally determining controversy without his presence as party. G.S. § 1-260.—Inland Greens HOA, Inc. v. Dallas Harris Real Estate-Construction Inc., 492 S.E.2d 359, 127 N.C.App. 610.—Decl Judgm 293.1.

N.C.App. 1996. When person is so vitally interested in controversy that valid judgment cannot be rendered in action completely and finally determining controversy without his presence, such person is "necessary party" to action.—Upchurch v. Upchurch, 468 S.E.2d 61, 122 N.C.App. 172, review denied 472 S.E.2d 26, 343 N.C. 517, appeal after remand 495 S.E.2d 738, 128 N.C.App. 461, review denied 501 S.E.2d 925, 348 N.C. 291.—Parties 18, 29.

N.C.App. 1996. When third party holds legal title to property which is claimed to be marital property, that third party is "necessary party" to equitable distribution proceeding, with their participation limited to issue of ownership of that property, as otherwise trial court would not have jurisdiction to enter order affecting title to that property.—Upchurch v. Upchurch, 468 S.E.2d 61, 122 N.C.App. 172, review denied 472 S.E.2d 26, 343 N.C. 517, appeal after remand 495 S.E.2d 738, 128 N.C.App. 461, review denied 501 S.E.2d 925, 348 N.C. 291.—Divorce 70.

N.C.App. 1992. Mother's husband at time of birth of child was not "necessary party" to paternity action brought against putative father, where husband's rights and responsibilities with regard to child had been finally determined when Florida court found that he was not father of child, and thus outcome of instant case would not affect his interest in any way. Rules Civ.Proc., Rule 19(b), G.S. § 1A-1.—Lombroia v. Peek, 421 S.E.2d 784, 107 N.C.App. 745.—Child 30.

N.C.App. 1988. Person is "necessary party" to action when he is so vitally interested in controversy involved in action that valid judgment cannot be rendered in action completely and finally determining controversy without his presence as party; when complete determination of matter cannot be had without presence of other parties, court must cause them to be brought in.—Hedrick v. Hedrick, 368 S.E.2d 14, 90 N.C.App. 151, appeal dismissed, review denied 373 S.E.2d 108, 323 N.C. 173.—Parties 18, 32.

N.C.App. 1988. Adopting father was not "necessary party" to paternal grandparents' request for visitation rights with children, after natural father signed consent to adoption giving up his right to children, where adopting father's rights had not vested at time of hearing; trial court could make complete determination of issues before it and entered valid judgment without necessity of requiring grandparents to join adopting father as necessary party. G.S. § 50-13.2A.—Hedrick v. Hedrick, 368 S.E.2d 14, 90 N.C.App. 151, appeal dismissed, review denied 373 S.E.2d 108, 323 N.C. 173.—Child C 409.

N.C.App. 1987. Insurer, which had obtained subrogation of insured's rights "to extent of \$600,900 insurance payment," was "necessary party" in insured's action against aircraft lessee service company for losses sustained from disappearance of aircraft, where determination of claims would necessarily prejudice insurer's interest. Rules Civ. Proc., Rule 19, G.S. § 1A-1.—J & B Slurry Seal Co. v. Mid-South Aviation, Inc., 362 S.E.2d 812, 88 N.C.App. 1.—Parties 20.

N.C.App. 1985. State Board of Education was "necessary party" to parents' action seeking to enjoin county board of education from operating and implementing experimental program involving lengthening of school day and term.—Morgan v. Polk County Bd. of Educ., 328 S.E.2d 320, 74 N.C.App. 169.—Inj 114(3).

N.C.App. 1981. A "necessary party" is one whose presence is required for a complete termination of the claim, and is one whose interest is such that no decree can be rendered without affecting the party; in other words, a "necessary party" is one whose interests will be directly affected by the outcome of the litigation.—*Begley v. Employment Sec. Commission of North Carolina*, 274 S.E.2d 370, 50 N.C.App. 432.—Parties 18.

N.C.App. 1980. "Necessary party" is one whose presence is required for complete determination of a claim. Rules of Civil Procedure, rule 19, G.S. § 1A-1.—*Behr v. Behr*, 266 S.E.2d 393, 46 N.C.App. 694.—Parties 18, 29.

N.C.App. 1980. In action by former wife for arrearage and support from former husband, based on separation agreement which provided that all support payments were to be made to former wife as child's mother, joinder of child as a "necessary party" was not required, whether or not she had reached the age of majority or had become emancipated. Rules of Civil Procedure, rule 19, G.S. § 1A-1.—*Behr v. Behr*, 266 S.E.2d 393, 46 N.C.App. 694.—Child S 473.

N.C.App. 1971. "Necessary party," who must be joined in an action, is one who is so vitally interested in the controversy that valid judgment cannot be rendered in the action completely and finally determining the controversy without his presence, while "proper party," who may be joined in the trial court's discretion, is one whose interest may be affected by a decree but whose presence is not essential in order for the court to adjudicate the rights of others. Rules of Civil Procedure, rule 19, G.S. § 1A-1.—*Crosol Carding Developments, Inc. v. Gunter & Cooke, Inc.*, 183 S.E.2d 834, 12 N.C.App. 448.—Parties 25, 29.

N.C.App. 1968. Person is a "necessary party" to an action when he is so vitally interested in controversy involved that valid judgment cannot be rendered in action completely and finally determining controversy without his presence as a party. G.S. § 1-73.—*Maryland Cas. Co. v. Hall*, 162 S.E.2d 691, 2 N.C.App. 198.—Parties 18, 29.

N.D. 1965. A "necessary party" is one whose presence is essential to determination of controversy; every person who may be affected by relief sought, or who is interested in object of suit, is "necessary party".—*Smith v. Amerada Petroleum Corp.*, 136 N.W.2d 483.—Parties 18.

N.D. 1965. To be "necessary party", person must be so vitally interested in subject matter of suit that valid judgment cannot be rendered without his presence as a party.—*Smith v. Amerada Petroleum Corp.*, 136 N.W.2d 483.—Parties 18, 29.

Ohio App. 1 Dist. 1939. Generally, a judgment debtor is a "necessary party" defendant in an action to subject his equitable interest to the payment of a judgment, even though he is a nonresident. Gen. Code, § 11760.—*Devou v. Devou*, 31 N.E.2d 159, 65 Ohio App. 508, 17 O.O. 183, 31 Ohio Law Abs. 205, appeal dismissed 25 N.E.2d 681, 136 Ohio St. 339, 17 O.O. 190.—Debtor & C 11.

Ohio App. 1 Dist. 1939. In suit by creditor having judgment obtained in a foreign state against trustee administering a trust under which judgment debtor was beneficiary to apply sums due debtor in satisfaction of the judgment, judgment debtor was a "necessary party" defendant. Gen.Code, § 11760.—*Devou v. Devou*, 31 N.E.2d 159, 65 Ohio App. 508, 17 O.O. 183, 31 Ohio Law Abs. 205, appeal dismissed 25 N.E.2d 681, 136 Ohio St. 339, 17 O.O. 190.—Trusts 258.

Ohio App. 1 Dist. 1938. In partition proceeding between cotenants, mortgagee of property is not a "necessary party," but is a "proper party."—*Klosterman v. Klosterman*, 16 N.E.2d 826, 58 Ohio App. 511, 12 O.O. 303, 27 Ohio Law Abs. 189.—Partit 46.2.

Ohio App. 1 Dist. 1936. In executor's action against savings and loan company to recover balance remaining in joint and survivorship account of which his decedent was one of two joint owners, loan company could not interplead a third party on ground that such third party had been substituted for surviving joint owner where surviving joint owner was out of country and could not be served by publication, since surviving joint owner was "necessary party" to the interpleader. Gen.Code, § 11292.—*Falk v. Security Sav. & Loan Co.*, 7 N.E.2d 668, 54 Ohio App. 395, 8 O.O. 158, 23 Ohio Law Abs. 447.—Interpl 19.

Ohio App. 2 Dist. 1989. Holder of any right to, or interest in, mortgaged property is "necessary party" for foreclosure and conveyance of his right or interest, but is not "necessary party" for purposes of jurisdiction, sale, and conveyance of title to bona fide purchaser for value through judicial sale.—*Hembree v. Mid-America Federal Savings & Loan Assn.*, 580 N.E.2d 1103, 64 Ohio App.3d 144.—Mtg 427(1).

Ohio App. 2 Dist. 1940. Where proceeding was brought by life tenant to secure apportionment of special assessments between herself and remaindermen, the remaindermen were "real parties in interest" and as such entitled to appeal from adverse decree without joinder of administrator and trustee as a "necessary party". Gen.Code, § 12223-15.—*Reibold v. Evans*, 29 N.E.2d 369, 65 Ohio App. 123, 18 O.O. 331, 31 Ohio Law Abs. 285.—App & E 150(1).

Ohio App. 2 Dist. 1938. The superintendent of building and loans who had ordered liquidation of building and loan association and had rejected plaintiffs' claims, and had set aside a sum of money to take care of disallowed claims if ultimately ordered to be paid, and had returned further liquidation to association before filing of supplemental petition by plaintiffs suing on their claims, and had filed no answer in such suit, was not a "necessary party" at time of trial. Gen.Code, §§ 687-1, 687-21, 687-23.—*Pyper v. Mutual Home & Sav. Ass'n of Dayton*, 35 N.E.2d 736, 12 O.O. 280, 27 Ohio Law Abs. 97, 27 Ohio Law Abs. 505, appeal dismissed 16 N.E.2d 424, 134 Ohio St. 345, 12 O.O. 296.—B & L Assoc 41(5).

Ohio App. 4 Dist. 1937. In action for personal injuries and damages to automobile, resulting from automobile collision, the plaintiff's insurer was a "proper party" but not a "necessary party," and could be brought into the case by either the plaintiff or the defendant, where the plaintiff had not been indemnified by the insurer for the full amount of the loss. Gen.Code, §§ 11241, 11254, 11256.—*Barnhill v. Brown*, 16 N.E.2d 478, 58 Ohio App. 188, 12 O.O. 74.—*Autos 234; Parties 51(4)*.

Ohio App. 6 Dist. 1940. In death action by deceased employee's widow against the executrix of a deceased employer who did not comply with the provisions of the compensation act, the Industrial Commission was not a "necessary party" or "proper party" where there was no allegation in the petition or answer or any statement, claim, or proof in commission's motion asking to be made a party defendant, that employer's estate was insolvent or not sufficient to respond to any judgment that might be recovered against it. Gen.Code, §§ 1465-54, 1465-69, 1465-73, 1465-74, 1465-90.—*Kopp v. Torto*, 36 N.E.2d 900, 67 Ohio App. 326, 21 O.O. 293.—*Work Comp 2122*.

Ohio App. 7 Dist. 1937. In foreclosure action against corporation on its bonds secured by a trust deed, stockholder of corporation was not a "necessary party" and had no interest adverse to trustees, where stockholder did not question validity of bonds or trust deed. Gen.Code, § 11255.—*Central Nat. Bank of Cleveland v. Newton Steel Co.*, 22 N.E.2d 428, 61 Ohio App. 57, 15 O.O. 83.—*Corp 482(3)*.

Ohio App. 7 Dist. 1936. A receiver appointed, after judgment and after appeal on questions of law was perfected, in connection with proceeding in aid of execution, to hold intact property of judgment debtor, against which no other claims or liens were asserted, was not "necessary party" to the appeal.—*Brainard Inv. Co. v. F.H.L. Corp.*, 9 N.E.2d 178, 55 Ohio App. 127, 8 O.O. 417, 24 Ohio Law Abs. 39.—*App & E 327(9)*.

Ohio App. 8 Dist. 1937. The purchaser of mortgaged premises, who assumed mortgage obligation but subsequently sold the premises, was not a "necessary party" to the foreclosure action, and hence was liable to mortgagee for deficiency resulting from sale of mortgaged premises, notwithstanding that the foreclosure action as to him had been dismissed without prejudice.—*State ex rel. Squire v. Kofron*, 15 N.E.2d 783, 58 Ohio App. 65, 10 O.O. 332, 26 Ohio Law Abs. 58.—*Mtg 427(4), 558*.

Ohio App. 9 Dist. 1943. In a civil proceeding, adversary in character, whereby an estate is sold in fee, owner of estate is a most "necessary party", and any proceeding in which the right to be such a party is not accorded such owner is invalid. Gen. Code, § 10510-15.—*Schmidt v. Weather-Seal, Inc.*, 50 N.E.2d 362, 71 Ohio App. 387, 26 O.O. 322.—*Parties 18, 29*.

Ohio App. 9 Dist. 1940. Where it appeared on trial that insurance company had become part owner of a chose in action arising out of automobile accident by reason of paying costs of repairs of

plaintiff's automobile except for \$50 and taking a subrogation agreement from plaintiff pursuant to collision policy, insurance company was a "party united in interest" with plaintiff and was a "necessary party" when demanded by defendant, and defendant had right to either have insurance company made a party prior to submission of case to jury or to have case dismissed for want of necessary parties. Gen.Code, § 11256.—*Verdier v. Marshallville Equity Co.*, 46 N.E.2d 636, 70 Ohio App. 434, 25 O.O. 178.—*Parties 20, 51(4)*.

Ohio App. 10 Dist. 1988. State, which had been named by defendant in suit seeking injunctive relief to prevent construction of reformatory in city, had right to raise all necessary defenses, including its immunity from city zoning ordinance and constitutionality of ordinance, and was not required to make city party to action as third party defendant to assert invalidity of ordinance, and thus, city was not "necessary party" to raising of such defense. R.C. § 2721.12; Rules Civ.Proc., Rules 13, 14, 19(A).—*Taylor v. State, Dept. of Rehabilitation and Correction*, 540 N.E.2d 310, 43 Ohio App.3d 205.—*Zoning 582.1*.

Okla. 1949. In action by holder of resale tax deed to quiet title to realty which was a part of assets of bank liquidated by bank examiner before tax resale and issuance of tax deed, bank commissioner was not a "necessary party".—*American Bank & Trust Co. v. Continental Inv. Corp.*, 213 P.2d 861, 202 Okla. 341, 1949 OK 280.—*Quiet T 30(3)*.

Okla. 1942. In action by furniture company against bank for alleged breach of contract by the bank in the manner of collecting from third person for furniture and for furniture company's commissions before releasing bill of lading for furniture, third person was neither a "necessary party" nor a "proper party".—*Genet Co. v. National Bank of Tulsa*, 133 P.2d 553, 191 Okla. 481, 1942 OK 367.—*Banks 175(0.5)*.

Okla. 1940. Where injured employee to whom unpaid benefits were due under compensation law died at time when compensation act provided that benefits should be paid "only to employees," and before amendment providing that an award shall be payable to and for benefit of certain dependents, it was proper to enter an order reviving the matter to collect unpaid benefits, but employee's executor or administrator was the "necessary party" to seek the revivor and not employee's widow or minor heir. 85 Okl.St. Ann. § 48; Laws 1933, c. 29, § 3, 85 Okl.St. Ann. § 48 note.—*Felmet v. Barbre*, 106 P.2d 1107, 188 Okla. 116, 1940 OK 443.—*Work Comp 1169*.

Okla. 1939. In action by one member of mining partnership against another member who had been assigned an interest in partnership, to compel defendant to pay her proportionate share of expenses incurred by plaintiff in operation of an oil and gas lease, defendant's assignor was not a "necessary party" where defendant had taken her place in partnership and had succeeded to assignor's liability with reference to liens that had already attached to

property of partnership.—*Lyons v. Stekoll*, 96 P.2d 60, 186 Okla. 94, 1939 OK 395.—*Mines* 99(2).

Okla. 1938. In action for accounting between members of mining partnerships, a former partner who parted with all interest in the partnership property, though a "proper party," was not a "necessary party," where no personal judgment was sought against former partner, and only partnership property was sought to be held liable for any amount found due plaintiff.—*Hatten v. Intercean Oil Co.*, 78 P.2d 392, 182 Okla. 465, 1938 OK 159, 116 A.L.R. 727.—*Mines* 99(2).

Okla. 1936. Partner of oil drilling contractor held not "necessary party" to action by contractor for one-half of amount deducted from drilling contract because of owner's breach of agreement with individual partners to furnish additional work in consideration of deduction, where partner had dissolved partnership and disclaimed interest in action.—*Helmerich & Payne v. Keeney*, 61 P.2d 709, 178 Okla. 32, 1936 OK 638.—*Partners* 199.

Okla. 1936. Equity receiver of assets of mortgagee appointed after institution of foreclosure proceedings is not "necessary party" to foreclosure action, and mortgagor cannot complain either in foreclosure action or in collateral suit that such receiver has not appeared or was not made party.—*Hardman v. Whitney*, 54 P.2d 1065, 176 Okla. 142, 1936 OK 183.—*Mtg* 427(1).

Okla. 1935. Principal obligor or receiver for principal obligor held not "necessary party" to action against guarantors. 12 Okl.St. Ann. § 234; 15 Okl.St. Ann. § 342.—*Janeway v. Vandeventer*, 45 P.2d 79, 172 Okla. 379, 1935 OK 569.—*Guar* 82(2).

Okla. 1934. Where value of property wrongfully destroyed by third party does not exceed fire loss paid by insurer, insured is not "necessary party," but insurer may bring action in its own name against wrongdoer for recovery of value of property destroyed.—*Harrington v. Central States Fire Ins. Co. of Wichita, Kan.*, 36 P.2d 738, 169 Okla. 255, 1934 OK 536, 96 A.L.R. 859.—*Insurance* 3526(5).

Okla. 1928. One whose rights may be affected by a reversal or modification of a judgment appealed from is a "necessary party" in the appellate court.—*Scott v. Amis*, 276 P. 215, 136 Okla. 72, 1928 OK 767.

Okla. 1916. One whose rights may be affected by a reversal or modification of a judgment appealed from is a "necessary party" in the appellate court.—*Komalty v. Cassidy-Southwest Commission Co.*, 161 P. 1061, 62 Okla. 81, 1916 OK 731.

Okla. 1915. One whose rights may be affected by a modification of judgment appealed from is a "necessary party" in the appellate court.—*Tupelo Townsite Co. v. Cook*, 153 P. 164, 52 Okla. 703, 1915 OK 925.

Or. 1949. One who holds the legal title to realty in respect of which specific performance is sought, though he has no beneficial interest therein, is a "necessary party" defendant, if a conveyance of the

legal title is sought.—*Cottrell v. Prier*, 212 P.2d 87, 187 Or. 454.—*Parties* 30; *Spec Perf* 106(1).

Or. 1945. Where receiver for local union was appointed in a suit instituted subsequent to a suit by member of union, on behalf of himself and all members, for an accounting and to recover funds of union which were alleged to have been illegally expended, and no order was made in subsequent suit enjoining further prosecution of suit by member, receiver subsequently appointed was not a "necessary party" in suit instituted by member, though upon his application receiver might have been made a party thereto.—*Duke v. Franklin*, 162 P.2d 141, 177 Or. 297.—*Labor* 150.

Or. 1942. A purchaser of judgment debtor's personal property at execution sale was "necessary party" to debtor's proceeding to vacate sale, and such purchaser's rights could not be affected without his having had opportunity to have day in court.—*Ahlstrom v. Lyon*, 131 P.2d 219, 169 Or. 629.—*Execution* 253(1); *Jud S* 42.

Or. 1942. In suit for rescission of subscription for the purchase and exchange of corporate stock, the corporation was a "necessary party" where there was no allegation or proof that the corporation was formed merely as a means to defraud so as to relieve the individual defendant of liability.—*Sheppard v. Blitz*, 126 P.2d 509, 168 Or. 691.—*Corp* 121(1).

Or. 1941. Neither the district court nor the judge thereof is a "necessary party" or "proper party" to a proceeding by writ of review to review a decision of the district court. ORS 34.010 et seq.—*Asher v. Pitchford*, 115 P.2d 337, 167 Or. 70.—*Cert* 37.

Pa. 1943. Where commonwealth had not assessed transfer inheritance tax against estate of testator's widow, the commonwealth had no such interest as to make it a "necessary party" to proceeding for proration of taxes assessed against testator's estate. 20 P.S. § 844.—*In re Mellon's Estate*, 32 A.2d 749, 347 Pa. 520.—*Int Rev* 4812.

Pa. 1941. In mandamus proceedings against a corporation and its secretary to compel corporation to transfer stock to plaintiff on books of corporation, wherein secretary intervened in his individual capacity, a judgment could not have been entered which would have concluded rights of registered owner of stock or rights of intervening defendant, individually, to certificate or shares represented, where registered owner was not a party to proceedings, and it was immaterial that registered owner disclaimed any personal or pecuniary interest in certificate, since such owner was a "necessary party" to any proceedings to try title to stock. 12 P.S. § 1916.—*Leff v. N. Kaufman's, Inc.*, 20 A.2d 786, 342 Pa. 342, 139 A.L.R. 267.—*Mand* 151(1).

Pa. 1938. In action to require accounting by pledgee for amount it received in excess of indebtedness secured by pledge, through a wrongfully conducted sale of the pledged security, creditor of insolvent estate of deceased pledgor was not "necessary party," and could not recover in its own

name.—*Huntingdon Valley Trust Co. v. Norristown-Penn Trust Co.*, 196 A. 821, 329 Pa. 356.—*Ex & Ad* 438(9).

Pa.Super. 1944. The Commonwealth of Pennsylvania was a "necessary party" to proceeding for compensation under Occupational Disease Act. 77 P.S. § 1201 et seq.—*Jones v. Philadelphia & Reading Coal & Iron Co.*, 36 A.2d 252, 154 Pa.Super. 465.—*Work Comp* 1194.

Pa.Super. 1940. The Department of Highways was a "necessary party" to proceedings wherein Public Utility Commission apportioned costs of improving and maintaining a viaduct carrying two state highway routes in city of third class across tracks and rights of way of two railroads among municipality, public utilities involved, and commonwealth. 66 P.S. §§ 1179–1181.—*Department of Highways of Pennsylvania v. Pennsylvania Public Utility Commission*, 14 A.2d 611, 141 Pa.Super. 376.—*R R* 99(5).

Pa.Cmwlth. 1993. "Necessary party" is one whose presence, while not indispensable, is essential if court is to resolve completely the controversy and to render complete relief.—*Pennsylvania Human Relations Com'n v. School Dist. of Philadelphia*, 651 A.2d 177, 167 Pa.Cmwlth. 1.—*Parties* 18, 29.

Pa.Cmwlth. 1980. An "indispensable party" is one whose rights are so connected with the claims of the litigants that no decree or order can be made without impairing those rights, whereas a "necessary party" is one whose presence, though not indispensable, is essential if court is to completely resolve controversy before it and render complete relief.—*Pennsylvania Assigned Claims Plan v. Insurance Com'r of Com.*, 420 A.2d 25, 54 Pa. Cmwlth. 93.—*Parties* 18, 29.

Pa.Cmwlth. 1978. A "necessary party" is one whose rights are so connected with the claims of the litigants that no relief can be granted without infringing on those rights.—*Pennsylvania Fish Commission v. Pleasant Tp.*, 388 A.2d 756, 36 Pa. Cmwlth. 216.—*Parties* 18, 29.

R.I. 1978. "Indispensable party" is one whose joinder in action is absolutely essential if the action is to proceed at all, while "necessary party" is one who ought to be joined but in whose absence the action can, nevertheless, continue. Rules of Civil Procedure, rule 19.—*Doreck v. Roderiques*, 385 A.2d 1062, 120 R.I. 175.—*Parties* 18, 29.

S.C. 1948. Generally, an administrator is not a "necessary party" to action against his surety for damages for breach of the condition of the bond.—*Fouche v. Royal Indem. Co. of N. Y.*, 47 S.E.2d 209, 212 S.C. 194.—*Ex & Ad* 537(7).

S.C. 1944. Where controversy involved was whether defendant was liable to plaintiff by reason of collision between plaintiff's automobile and defendant's truck and plaintiff's insurer loaned plaintiff amount of loss payable under collision policy pursuant to a loan receipt agreement, by which loan was payable from proceeds of any recovery, plaintiff's insurer was not a "necessary party" to action against defendant for collision damage. Code

1942, §§ 397, 399, 406, 409.—*Phillips v. Clifton Mfg. Co.*, 30 S.E.2d 146, 204 S.C. 496, 157 A.L.R. 1255.—*Parties* 20.

S.C. 1942. A deceased employee's employer held not "necessary party" or "proper party" to action by administratrix of employee's estate to recover damages for his death from another than employer. Code 1942, §§ 411, 412; Code 1942, § 7035–11.—*Fuller v. Southern Electric Service Co.*, 20 S.E.2d 707, 200 S.C. 246.—*Work Comp* 2223.

S.C. 1941. A widow, claiming, as beneficiary of her deceased husband's life insurance policies, proceeds thereof in excess of balance due on husband's mortgage debts to insurer after application thereto of proceeds of sale of mortgaged realty, is "necessary party" to proceeding by devisee of such realty under husband's will for order requiring insurer to apply proceeds of policies to payment of such debts, satisfy mortgages, and discontinue foreclosure suits. Code 1932, § 409.—*Ex parte Boddie*, 15 S.E.2d 122, 197 S.C. 251.—*Wills* 746.

S.C. 1941. Where funds of State Rural Electrification Authority were pledged to the United States as part security for its loans, and Authority by covenant in mortgage became bound to deposit all revenues from operation of its properties in special revenue account and to withdraw funds in such account only for purposes and in the order named in covenant, and the United States had given its consent to transfers made by the Authority to co-operative associations as authorized by South Carolina Act, the United States was a "necessary party" to petition by taxpayer to enjoin the Authority from paying or crediting certain obligations, and in absence of consent by the United States to be sued, petition was required to be dismissed. Act March 14, 1935, 39 St. at Large, p. 71; Act May 25, 1940, 41 St. at Large, p. 1847; Act May 16, 1940, 41 St. at Large, §§ 1(d), 2–5, 7, 9, pp. 2059–2062.—*Crews v. Beattie*, 14 S.E.2d 351, 197 S.C. 32.—*Pretrial Proc* 558.

S.C. 1939. Where one is injured through negligence or wrongdoing of one who at time of injury was acting in transaction with a third party as principal, the person injured may sue either agent or principal or join both, and where plaintiff has elected to sue principal alone, agent is not a "necessary party."—*Lane v. Home Ins. Co.*, 2 S.E.2d 30, 190 S.C. 84.—*Princ & A* 188.

S.C.App. 1985. A "necessary party" is one whose rights must be ascertained and settled before the rights of the parties to the action can be determined.—*J.J. Lawter Plumbing v. Wen Chow Intern. Trade and Inv., Inc.*, 331 S.E.2d 789, 286 S.C. 49.—*Parties* 18, 29.

S.D. 1968. "Necessary party" is one without whom complete determination or settlement of questions involved cannot be made.—*Botum v. Herr*, 162 N.W.2d 880, 83 S.D. 542.—*Parties* 18, 29.

S.D. 1956. A contractor may be a "proper party" in an action by a materialman to foreclose a mechanic's lien, but it does not follow that he is a

"necessary party." SDC 33.0409, 39.0713.—Keeley Lumber & Coal Co. v. Dunker, 77 N.W.2d 689, 76 S.D. 281.—Mech Liens 263(9).

S.D. 1956. Contractor was not a "necessary party" to materialman's action to foreclose materialman's lien against owners. SDC 33.0409, 39.0713.—Keeley Lumber & Coal Co. v. Dunker, 77 N.W.2d 689, 76 S.D. 281.—Mech Liens 263(9).

Tenn. 1948. In suits to set aside tax deeds from the state to tax purchaser as cloud on complainant's title, state was a "necessary party".—Wynn v. Dickey, 212 S.W.2d 671, 187 Tenn. 1.—Tax 806.

Tenn. 1940. Where a decedent's lands were sold subject to mortgages, the trustee under the mortgages was not a "necessary party" to administratrix suit to sell realty, and the decree ordering sale affected only the interests and rights of parties to the suit.—Reynolds v. Chumbley, 135 S.W.2d 941, 175 Tenn. 496.—Ex & Ad 356.

Tenn.Ct.App. 1942. Where complainant under will had no title to lands falling within a specified grant belonging to testator, complainant was not a "necessary party" to proceeding to sell that part of testator's estate.—Lasater v. Cumberland Coal Corp., 171 S.W.2d 407, 26 Tenn.App. 277.

Tenn.Ct.App. 1939. A substituted trustee was a "necessary party" to suit by beneficiaries against original trustee for an accounting, where record did not show that substituted trustee refused to sue original trustee.—Gregory v. Merchants State Bank, 135 S.W.2d 465, 23 Tenn.App. 567.—Trusts 305.

Tex. 1973. To be a "necessary party" within venue statute exception allowing suit to be maintained in county other than in county of defendant's residence against all necessary parties where there are two or more defendants in suit and suit is lawfully maintainable as to any of the defendants in such other county, joinder of a defendant must be necessary in order to afford plaintiff the complete relief to which he is entitled under facts of case against defendants properly suable in county of suit. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Loop Cold Storage Co. v. South Texas Packers, Inc., 491 S.W.2d 106.—Venue 22(4).

Tex. 1956. Under statute providing that where there are two or more defendants and action is maintainable in a certain county against any of such defendants, then suit may be maintained in such county against any and all necessary parties thereto, every person whose joinder is necessary to afford plaintiff full relief to which he is entitled in the suit is a "necessary party" within meaning of statute. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Ladner v. Reliance Corp., 293 S.W.2d 758, 156 Tex. 158.—Venue 22(4).

Tex. 1955. "Necessary party" is one who is so vitally interested in subject matter of litigation that valid decree cannot be rendered without his presence as a party.—McDonald v. Alvis, 281 S.W.2d 330, 154 Tex. 570.—Parties 18, 29.

Tex. 1951. Where plaintiff, a resident of Dallas county, sought to recover property delivered on

consignment to nonresident defendant, including that subsequently pawned by nonresident defendant to defendant residing in Smith county, Smith county defendant was a "necessary party" and therefore as to resident defendant venue would properly lie in Dallas county. Vernon's Ann.Civ.St. art. 1995, §§ 3, 29a; Rules of Civil Procedure, rule 475.—Clingsmith v. Bond, 241 S.W.2d 616, 150 Tex. 419, opinion conformed to 242 S.W.2d 677.—Venue 22(6).

Tex. 1950. A contractor as principal on a construction performance bond in which contractor and foreign surety company undertook a joint and several obligation, was a "necessary party," as contemplated by venue statute, to a suit for recovery on the bond, so that venue could be maintained against the contractor in county in which venue was maintainable against surety because it maintained an agency in that county. Vernon's Ann.Civ.St. art. 1995, subds. 23, 27, 29a.—Ramey & Mathis v. Pitts, 230 S.W.2d 211, 149 Tex. 214, opinion conformed to 231 S.W.2d 686.—Venue 22(2).

Tex. 1947. Prior owner of land was not "necessary party" to suit for a specific performance by holder of an alleged preference right to purchase the land, where prior owner had parted prior to the suit, with all title and interest in the land by contract of sale and deed executed to defendant.—Antwine v. Reed, 199 S.W.2d 482, 145 Tex. 521.—Spec Perf 106(1).

Tex. 1944. Nephew who had divested himself of all interest in property in controversy by conveyance to his children and disclaimer, was not a "necessary party" to suit to cancel deceased's trust agreement.—Ragsdale v. Ragsdale, 179 S.W.2d 291, 142 Tex. 476.

Tex. 1944. Where a defendant is suable in a county other than the county of his residence, and the plaintiff joins another as defendant, such other defendant is a "necessary party" within exception 29a to the venue statute, if the complete relief, to which plaintiff is entitled as against defendant properly suable in that county, can be obtained only in a suit in which both defendants are parties. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Union Bus Lines v. Byrd, 177 S.W.2d 774, 142 Tex. 257.—Venue 22(4).

Tex. 1944. Where truck collided with bus, bus passenger sued bus company, and company filed a cross-action against truck owner for contribution, truck owner was not a "necessary party", under exception 29a of the venue statute, to passenger's suit, so as to permit truck owner to be sued in county where bus company was sued. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Union Bus Lines v. Byrd, 177 S.W.2d 774, 142 Tex. 257.—Venue 22(10).

Tex. 1942. In suit to recover title and possession of road bonds issued by Commissioners Precinct which bonds were sold to State Board of Education, and were in possession of State Treasurer, the state was a "necessary party", since the state is the owner of the state permanent school fund used in paying for the bonds, and the Treasurer is custodian of

such fund. Vernon's Ann.Civ.St. arts. 2669–2671, 2673, 4378; Vernon's Ann.St.Const. art. 7, § 5.—Lockhart v. A. W. Snyder & Co., 163 S.W.2d 385, 139 Tex. 411.—Counties 182.

Tex. 1942. A municipal corporation was a “necessary party” to a suit by the state to cancel, as creating an unconstitutional monopoly, an agreement between electric company and the municipal corporation made in part for the benefit of the municipality. Vernon's Ann.St.Const. art. 1, § 26.—State v. Central Power & Light Co., 161 S.W.2d 766, 139 Tex. 51.—Monop 6.

Tex. 1941. A foreign life insurance company's claim against the state for refund of illegal taxes paid on annuity policy premium receipts is not for refund of “franchise tax” within statute requiring approval of claim for refund of franchise tax by Secretary of State, so that such officer is neither “necessary party” nor “proper party” to mandamus proceeding to compel Attorney General and State Comptroller to approve company's claim. Laws 1941, c. 621, § 2.—Union Cent. Life Ins. Co. v. Mann, 158 S.W.2d 477, 138 Tex. 242.—Mand 151(2).

Tex. 1941. The attorney general is a “necessary party” to proceedings affecting the validity, administration, or enforcement of a charitable public trust, but there are exceptions to such general rule.—Miller v. Davis, 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Char 49.

Tex. 1941. The attorney general is not a “necessary party” to an action involving a public charity, where the public interest in the action is not direct and essential, but is remote and incidental.—Miller v. Davis, 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Char 49.

Tex. 1941. The attorney general is not a “necessary party” to a suit to construe a will bequeathing property to a public charity when the bequest is placed in the hands of trustees charged specifically with the management for the *cestui que trust*, and no issue of waste or mismanagement is involved.—Miller v. Davis, 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Char 49.

Tex. 1941. In action by executors for construction of will creating a charitable foundation, the attorney general was not a “necessary party”.—Miller v. Davis, 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Char 49.

Tex. 1941. In action by executors for construction of will, legatee to whom testator made a bequest of \$1, was not a “necessary party.”—Miller v. Davis, 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Wills 700.

Tex. 1940. Where widow of deceased partner pursuant to an agreement conveyed interest in partnership and corporation to partnership which together with corporation agreed to hold widow harmless from all claims from partnership liability for a consideration to be paid from oil produced under an interest in a lease which corporation conveyed to widow until consideration was fully paid and partnership and corporation guaranteed

widow complete payment of consideration, and corporation was dismissed from widow's suit in Dallas county district court, to set aside conveyance, court had no further jurisdiction of suit, since instruments constituted one contract, cancellation of which would affect corporation, which was a “necessary party.”—Royal Petroleum Corp. v. McCallum, 135 S.W.2d 958, 134 Tex. 543.—Pretrial Proc 504.

Tex. 1939. A “necessary party” is one who is so vitally interested in the object or subject matter of the suit that a valid judgment cannot be rendered without his presence.—Stanolind Oil & Gas Co. v. State, 133 S.W.2d 767, 136 Tex. 5, modified on rehearing 145 S.W.2d 569, 136 Tex. 5.—Parties 29.

Tex. 1939. Where wife sought divorce in proceeding in Dallas county against husband, a resident of Tarrant county and sought decree that husband's mother, a resident of Tarrant county, held legal title to property in trust for son and division thereof, although property, none of which was in Dallas county, had been conveyed by deed absolute six years before son's marriage, mother was neither a “necessary party” nor a “proper party” and could not be forced to litigate the matter in Dallas county against her will. Vernon's Ann.Civ.St. art. 1995, subds. 16, 29.—Ex parte Scott, 123 S.W.2d 306, 133 Tex. 1, answer to certified question conformed to Scott v. Scott, 126 S.W.2d 525.—Venue 22(6).

Tex.Com.App. 1943. In ‘tort action, brought against two defendants jointly in county wherein neither resides, but in which one of them committed trespass alleged, so as to authorize venue as against him, under exception 9 of the venue statute, other defendant, sought to be adjudged liable only under respondeat superior doctrine, is not “necessary party” within exception 29a. Vernon's Ann. Civ.St. art. 1995, subds. 9, 29a.—Moreland v. Hawley Independent School District, 168 S.W.2d 660, 140 Tex. 391.—Venue 22(6).

Tex.Com.App. 1942. In mother's action for loss of services of minor son injured in automobile accident, wherein there was no pleading of any kind touching the father, the father was “necessary party.”—Houston Oxygen Co. v. Davis, 161 S.W.2d 474, 139 Tex. 1, 140 A.L.R. 868.—Parent & C 7(6).

Tex.Com.App. 1941. In mandamus action against county judge and county commissioners in their official capacities and as constituting the commissioners' court to compel performance of statutory duty of commissioners' court to record in its minutes certificate of district judge appointing plaintiff as county auditor with an order directing payment of auditor's salary, the county was not a “necessary party”, especially where county clerk had indicated that he would issue vouchers for auditor's salary if entry of district judge's order was allowed by commissioners' court. Vernon's Ann. Civ.St. arts. 1645, 1646, 1647.—Weaver v. Commissioners' Court of Nacogdoches County, 146 S.W.2d 170, 135 Tex. 611.—Mand 152.

Tex.Com.App. 1939. Where, by will executed by husband and wife, husband was to receive wife's entire estate, if she should die first, and wife prede-

ceased husband, one whom the wife had named as a beneficiary in event that her husband should predecease her was not a "necessary party," in suit in district court to construe the will.—*Winston v. Griffith*, 128 S.W.2d 25, 133 Tex. 348.—*Wills* 700.

Tex.Com.App. 1939. The statutory amendment, providing that suit against two or more defendants in county wherein lawfully maintainable against any of them may be maintained therein against all necessary parties, authorizes maintenance against all such parties of suit maintainable under any other exception in amended venue statute against any one party, and every party whose joinder is necessary to secure full relief is "necessary party." Vernon's Ann.Civ.St. art. 1995, subd. 29a.—*Pioneer Bldg. & Loan Ass'n v. Gray*, 125 S.W.2d 284, 132 Tex. 509.—*Venue* 22(4).

Tex.Com.App. 1939. Grantee of mortgaged realty was "necessary party" to suit for foreclosure of trust deed, securing note payable to plaintiff in county wherein suit was brought, within exception, added to venue statute, that suit against two or more defendants in county wherein maintainable under such statute against any of them may be maintained therein against all necessary parties, so as to authorize his joinder as defendant, though he resided in another county. Vernon's Ann.Civ.St. art. 1995, subds. 5, 29a.—*Pioneer Bldg. & Loan Ass'n v. Gray*, 125 S.W.2d 284, 132 Tex. 509.—*Venue* 22(6).

Tex.Com.App. 1938. An administrator of estate of deceased ward is "necessary party" to writ of error proceeding to review decision in guardian's final accounting proceeding. Rev.St.1925, arts. 4299, 4300, 4305 (V.A.T.S. Probate Code, §§ 407, 411).—*Files v. Buie*, 112 S.W.2d 714, 131 Tex. 19.—*Guard & W* 161.

Tex.Com.App. 1938. Any person, whether plaintiff or defendant, who is directly affected in his interests or rights by reversal or modification of a judgment is a "necessary party" to writ of error proceedings.—*Files v. Buie*, 112 S.W.2d 714, 131 Tex. 19.—*App & E* 322, 327(2).

Tex.Com.App. 1937. In suit to obtain lot by adverse claimant in which persons claiming a half interest therein joined, seeking to set aside their partition deed to husband surviving wife through whom they claimed in so far as deed related to lot, on ground of mistake after heirs had brought suit to set aside partition agreement pursuant to which deed was executed where husband would have a half interest in realty if partition agreement was void, husband was a "necessary party" to reformation of the deed.—*Harmon v. Overton Refining Co.*, 109 S.W.2d 457, 130 Tex. 365, set aside on rehearing 110 S.W.2d 555, 130 Tex. 365.—*Partit* 8.

Tex.Com.App. 1934. Suit by part owner of vendor's lien notes pledged as security for loan against lender who repledged them to bank to secure indebtedness due by lender to bank, to compel accounting, held not maintainable against bank in county of lender's residence, wherein bank was not a resident under subdivision 29a, since bank was not a "necessary party," though suit was maintainable

against bank under subdivision 4 in such county, since lender and bank were jointly liable for trespass committed there. Vernon's Ann.Civ.St. art. 1995, subds. 4, 29a.—*First Nat. Bank v. Pierce*, 69 S.W.2d 756, 123 Tex. 186.—*Venue* 22(4).

Tex.Com.App. 1933. Debtor held not "necessary party" to suit by creditor to set aside bulk sale of debtor's assets (Vernon's Ann.Civ.St. art. 4001).—*Fischer v. Rio Tire Co.*, 65 S.W.2d 751.—*Fraud Conv* 255(3).

Tex.Com.App. 1932. In suit against defendants jointly and severally liable, nonresident defendant was "necessary party" within venue statute. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—*Commonwealth Bank & Trust Co. v. Heid Bros.*, 52 S.W.2d 74, 122 Tex. 56.—*Venue* 22(4).

Tex.Com.App. 1932. A "necessary party" to a suit, according to the general understanding of that term, is one who is so vitally interested in the subject-matter of the litigation that a valid decree cannot be rendered without his presence as a party.—*Commonwealth Bank & Trust Co. v. Heid Bros.*, 52 S.W.2d 74, 122 Tex. 56.—*Venue* 22(4).

Tex.Com.App. 1932. Independent executor was not a "necessary party" to the suit, because when the suit was instituted the property of the testator had ceased to become that of the estate, and its ownership had lawfully passed into the hands of the sole legatee, so that for plaintiff to procure a judgment against the estate, or for the court to order an execution against the property belonging to the estate, would be useless, since the officer receiving such writ of execution would be compelled to return it unsatisfied, in that there was no property belonging to the estate out of which it could have been satisfied.—*Cook v. Baker*, 45 S.W.2d 161.—*Ex & Ad* 7.

Tex.Com.App. 1932. Independent executor, who had fully executed plenary powers, was not "necessary party" to suit to enforce claim for services rendered testator. V.A.T.S. Probate Code, § 145.—*Cook v. Baker*, 45 S.W.2d 161.—*Ex & Ad* 7.

Tex.Com.App. 1931. "Necessary party" is one so vitally interested in matter that valid decree cannot be rendered without his presence.—*Adams v. Bankers' Life Co.*, 36 S.W.2d 182.—*Parties* 32.

Tex.App.—Fort Worth 1982. Owner of mineral rights on tract of land in Eastland County, where he executed oil and gas lease to lessee who purchased gas field equipment and sold it to corporation which leased equipment back to purchaser was "necessary party" to corporation's action against purchaser and owner of mineral rights seeking possession of oil and gas field equipment, monetary damages and fair rental value of its equipment during time when owner made unauthorized use of equipment and, thus, if suit could be lawfully maintained against any one defendant, it could be maintained against owner of mineral rights as a "necessary party." Vernon's Ann.Civ.St. art. 1995, subd. 29a.—*Pearson v. Petroleum Equipment Financial Corp.*, 631 S.W.2d 575.—*Bailm* 29.

Tex.App.—Austin 1984. “Necessary party” within meaning of venue statute governing actions against two or more defendants, is one whose joinder is required to afford the plaintiff complete relief to which he is entitled against the defendant who is properly suable in that county. Vernon’s Ann.Texas Civ.St. art. 1995, subd. 29a.—Duval County Ranch Co. v. Wooldridge, 667 S.W.2d 887, writ dismissed w.o.j.—Venue 22(4).

Tex.App.—San Antonio 1983. Where, under exceptions contained in statute governing venue in negligence actions, a suit is properly maintainable against one defendant in a county other than the county of his residence and the plaintiff therein joins another as defendant and seeks to sustain venue as to him under statute providing for necessary parties, then the suit may be maintained against the other defendant if he is a necessary party, and the other defendant is a “necessary party” if the complete relief to which the plaintiff is entitled as against the defendant properly suable in that county can be obtained only in a suit to which both defendants are parties. Vernon’s Ann.Texas Civ.St. art. 1995, subds. 9a, 29a.—Archer v. Bill Pearl Drilling Co., Inc., 655 S.W.2d 338, dismissed.—Venue 22(4).

Tex.App.—San Antonio 1983. “Necessary party” under venue section governing actions involving multiple defendants is party whose joinder is required in order to afford plaintiff the complete relief to which he is entitled under facts of case. Vernon’s Ann.Texas Civ.St. art. 1995, subd. 29a.—Sunstrand Corp. v. Allied Tanks Service, Inc., 653 S.W.2d 311, dismissed.—Venue 22(4).

Tex.App.—Dallas 1988. Any party to contract or instrument whose interest may be affected (diminished or enlarged) by judgment entered in reformation action is “necessary party” to action.—Beneficial Standard Life Ins. Co. v. Trinity Nat. Bank, 763 S.W.2d 52, writ denied.—Ref of Inst 33.

Tex.App.—Texarkana 1983. The “necessary party” for venue purposes in case of two or more defendants is a person whose joinder is required to afford the plaintiff the full relief to which he is entitled in a suit which can be lawfully maintained in the county of suit. Vernon’s Ann.Texas Civ.St. art. 1995, subd. 29a.—Mote Resources, Inc. v. Northridge Oil Co., 667 S.W.2d 179, dismissed.—Venue 22(4).

Tex.App.—Corpus Christi 1983. A party is a “necessary party” within meaning of venue statute providing that whenever there are two or more defendants in any suit brought in any county and such suit is lawfully maintainable as to any of such defendants, then such suit may be maintained in such county against any and all necessary parties, if complete relief to which plaintiff is entitled under facts of case as against defendant properly suable in that county can be obtained only in a suit to which both defendants are parties. Vernon’s Ann.Texas Civ.St. arts. 1995, 1995, subd. 29a.—Campbell & Son Const. Co., Inc. v. Housing Authority of City of Victoria, Tex., 655 S.W.2d 271.—Venue 22(4).

Tex.App.—Corpus Christi 1982. Every person whose joinder is necessary to afford plaintiff full relief to which he is entitled in a suit is a “necessary party” within meaning of the governing statute. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—BarclaysAmerican/Leasing, Inc. v. Vista Chevrolet, Inc., 636 S.W.2d 769.—Parties 29.

Tex.Civ.App.—Hous. [1 Dist.] 1973. In case in which return of earnest money was sought, in which cross claim was filed against bank and alleged that defendant had paid money by check drawn on bank and payable to plaintiff business and another entity and that check was cashed by another banking institution and bore purported endorsements and in which bank filed cross action against institution on basis of alleged guaranty of prior endorsements, controversies in cross actions were severable from action against corporation and institution, which alleged its residence to be in other county, was not, for purposes of plea of privilege, “necessary party” to action against corporation or bank. Vernon’s Ann.Civ.St. art. 1995, subds. 3, 23, 27, 29a.—Galleria Bank v. Southwest Properties, Inc., 498 S.W.2d 5.—Venue 22(10).

Tex.Civ.App.—Hous. [1 Dist.] 1969. “Necessary party” within meaning of statute providing that whenever there are two or more defendants in any suit brought in a county and such suit is lawfully maintainable therein as to any of such defendants, then such suit may be maintained in such county against any and all necessary parties thereto is every party whose joinder in suit is necessary to securing full relief in that suit. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Rey-Clif Co. v. Spence, 447 S.W.2d 764.—Venue 22(4).

Tex.Civ.App.—Fort Worth 1963. Evidence failed to establish that maternal grandmother was participating with her divorced daughter in unlawful restraint of divorced daughter’s child, and maternal grandmother was not a “necessary party” to habeas corpus proceeding by divorced husband. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Patrick v. Webb, 369 S.W.2d 446, writ dismissed.—Hab Corp 662.1.

Tex.Civ.App.—Fort Worth 1961. A nonresident defendant in an action to cancel a note and deed of trust, brought on the theory that other defendants had “suckered” plaintiff into stock promotion scheme pursuant to which he was fraudulently induced with nonresident defendant’s sanction to execute note and deed of trust was not a “necessary party” within meaning of venue statutes.—Clingingsmith v. Cook, 347 S.W.2d 279.—Venue 22(6).

Tex.Civ.App.—Fort Worth 1944. A codefendant is a “necessary party” suable in county other than his residence under exception 29a of venue statute, if complete relief to which plaintiff is entitled as against defendant properly suable in county of suit can be obtained only in a suit in which both defendants are parties. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Rogers v. Fort Worth Poultry & Egg Co., 185 S.W.2d 165.—Venue 22(4).

Tex.Civ.App.—Fort Worth 1944. Owner of truck which collided with bus causing it to strike plaintiff’s building was not a “necessary party” under

exception 29a of venue statute to action against bus company and truck owner for damage to building, so as to permit truck owner to be sued in county other than county of its residence, though bus company voluntarily answered and waived its privilege. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Rogers v. Fort Worth Poultry & Egg Co., 185 S.W.2d 165.—Venue 22(6).

Tex.Civ.App.—Fort Worth 1942. In action by heirs of deceased vendors to set aside deed for insanity of vendors, where pleadings of both plaintiffs and defendant purchasers negated any idea that third person owned any interest in land, fact that such third person joined in execution of oil lease which all parties recognized as valid did not show that third person was a "necessary party" to suit.—Pryor v. Awbrey, 165 S.W.2d 214, writ refused w.o.m.—Can of Inst 35(1).

Tex.Civ.App.—Fort Worth 1942. A "necessary party" is one without whose presence before court no adjudication of any of subject matter involved in litigation can be had.—Gillette Motor Transport Co. v. Whitfield, 160 S.W.2d 290.—Parties 18, 29.

Tex.Civ.App.—Fort Worth 1942. A railway company, as between it and railroad brakeman, suing truck company for injuries sustained in collision between truck and train, was not a "necessary party" to such suit within statutory provision that suit against two or more defendants may be maintained against all necessary parties thereto in any county wherein it is lawfully maintainable under venue statute as to any of such defendants. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Gillette Motor Transport Co. v. Whitfield, 160 S.W.2d 290.—Venue 22(6).

Tex.Civ.App.—Fort Worth 1942. A tort-feasor, not residing in county having venue of suit, brought against another alleged joint tort-feasor, not residing therein, because of some provision of venue statute, may properly be considered a "necessary party" to such suit within statute authorizing suit against all necessary parties in any county wherein it is lawfully maintainable under such statute as to any of defendants, so as to authorize tort-feasor first sued to implead such other tort-feasor by cross-action for contribution in county having venue of such suit. Vernon's Ann.Civ.St. art. 1995, subd. 29a; art. 2212.—Gillette Motor Transport Co. v. Whitfield, 160 S.W.2d 290.—Venue 22(10).

Tex.Civ.App.—Fort Worth 1941. The husband is a "proper party" plaintiff and in one sense a "necessary party" in an action to recover the wife's separate property. Vernon's Ann.Civ.St. art. 1983.—Crenshaw v. Newell, 147 S.W.2d 523, writ refused.—Hus & W 210(1).

Tex.Civ.App.—Fort Worth 1940. The statute providing that, when there are two or more defendants who are necessary parties and suit is lawfully maintainable in county as to any of such defendants, it may be maintained in such county against any or all of them, did not authorize suit by bank, to which draft was transferred and indorsed by resident payee, against payee and nonresident drawer in county where bank was located, on dis-

honor and refusal of payment of draft by drawee, since the drawer was not a "necessary party" in suit against payee for sale by him of the unpaid draft. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Warner v. First Nat. Bank of Bowie, 142 S.W.2d 897.—Venue 22(6).

Tex.Civ.App.—Fort Worth 1940. Where assignor assigns to another an interest in his chose in action, such assignee receives an equitable interest in the recovery, but does not become a "necessary party" to suit, but assignor may and in fact it becomes his duty to prosecute suit in his own name for use and benefit of assignee to extent of interest assigned.—Hyde v. Marks, 138 S.W.2d 619, writ dismissed, correct.—Assign 117, 129.

Tex.Civ.App.—Fort Worth 1940. A husband is not merely a "proper party" to an action to recover damages for personal injuries to wife but is a "necessary party", and he may join wife as a plaintiff with him, and if no plea of misjoinder is interposed, wife remains a party plaintiff.—Dixie Motor Coach Corp. v. Watson, 138 S.W.2d 314.—Hus & W 270(5).

Tex.Civ.App.—Fort Worth 1938. Where person who had assumed payment of vendor's lien note in deed under which he took land, subsequent to purchase, acquired vendor's lien note from payee and declined to merge that title with the one he acquired under deed and reissued note to secure loan, maker of the vendor's lien note was not a "necessary party" in action upon vendor's lien note.—Beeler v. Harbour, 116 S.W.2d 927, writ refused.—Ven & Pur 279.

Tex.Civ.App.—Fort Worth 1938. If the purpose of a suit is to hold a county liable or in any way to affect its interest, the county is a "necessary party."—Estes v. Commissioners Court of Hood County, 116 S.W.2d 826.—Counties 218.

Tex.Civ.App.—Fort Worth 1937. In suit by husband's administrator for a decree construing instrument by which wife gave her estate consisting in part of realty to husband if he survived her and disposed of her half of "the estate" if he should predecease her and husband made same provision in wife's favor and disposed of his half should he survive her and for a determination as to how realty should be distributed, an alternative legatee named in wife's will who was not joined as defendant was not a "necessary party," since omitted legatee was member of same class as defendants in suit, and under doctrine of virtual representation he would be bound by any judgment rendered against parties who asserted rights of the entire class of which he was a member.—Winston v. Griffith, 108 S.W.2d 745, affirmed 128 S.W.2d 25, 133 Tex. 348.—Wills 700.

Tex.Civ.App.—Fort Worth 1937. Wife's intervening petition to recover automobile, alleged to be her separate property, which had been seized by state liquor control board, held subject to state's general demurrer, where husband was not a party to suit, and wife did not allege that husband had neglected to prosecute suit or refused to join her, since husband was a "necessary party". Vernon's

Ann.P.C. art. 666-44; Vernon's Ann.Civ.St. art. 1983.—*Newell v. State*, 103 S.W.2d 194.—*Hus & W* 229.2.

Tex.Civ.App.—Fort Worth 1936. Where contract of employment of attorneys to represent plaintiff was joint and their liability for failure to comply was joint and several, attorney who was a nonresident of county of suit held a "necessary party," and hence plaintiff was entitled to maintain suit for breach of contract in county of residence of other attorney, whose domicile was in county of suit. Vernon's Ann.Civ.St. arts. 1995, subd. 29a; 2007.—*Cornell v. Alderdice*, 97 S.W.2d 387.—Venue 22(7.1).

Tex.Civ.App.—Fort Worth 1933. That highway construction subcontractor's bond stipulated penalty was payable to state held not to make state "necessary party" to suit involving right of principal contractor and his surety to recover over against subcontractor's surety.—*Smith v. Smith*, 58 S.W.2d 1063.—High 113(5).

Tex.Civ.App.—Fort Worth 1931. Where defendant agreed to share equally with plaintiff proceeds of lease taken in defendant's name, which lease defendant assigned, reserving royalties, defendant held "necessary party," and could be sued for royalties in county of assignee's residence, though defendant resided in another county. Vernon's Ann.Civ. St. art. 1995, subd. 29a.—*Rowan v. Wurzbach*, 44 S.W.2d 1033.—Venue 22(3).

Tex.Civ.App.—Fort Worth 1929. School district, though not "necessary party," held "proper party" to suit to enjoin, as illegal, assessment and collection of additional tax for school purposes. Rev.St. 1911, art. 2876, as amended by Acts 35th Leg. 1917, c. 169, § 1, Vernon's Ann.Civ.St. art. 2799.—*Zane-Cetti v. City of Fort Worth*, 21 S.W.2d 355, writ granted, reversed 29 S.W.2d 958.—Schools 107.

Tex.Civ.App.—Austin 1978. Within meaning of exception to venue statute providing that whenever suit is lawfully maintainable in county as to any of two or more defendants in suit, then suit is maintainable in such county against any and all necessary parties thereto, "necessary party" is one whose joinder is required to afford plaintiff complete relief to which he is entitled against defendant who is properly suable in that county. Vernon's Ann.Civ. St. art. 1995, subd. 29a.—*National Standard Ins. Co. v. Beard*, 569 S.W.2d 52, dismissed.—Venue 22(4).

Tex.Civ.App.—Austin 1977. A "necessary party" is one whose joinder is required in order to afford the plaintiff the complete relief to which he is entitled against the defendant who is properly suable in that county. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—*Orange Associates, Inc. v. Albright*, 548 S.W.2d 806, dismissed.—Venue 22(4).

Tex.Civ.App.—Austin 1959. A "necessary party" to a suit within venue statute to effect that if suit may be maintained in any county against one defendant, it may be maintained in same county against all necessary parties to suit, is one who is so vitally interested in subject matter of litigation that a valid

decree cannot be rendered without his presence as a party. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—*Liles v. Winters Independent School Dist.*, 326 S.W.2d 182.—Venue 22(4).

Tex.Civ.App.—Austin 1953. Where suit is properly maintainable against one defendant in county other than county of his residence, and plaintiff seeks to join another nonresident as defendant, other nonresident is "necessary party" within venue statute if complete relief to which plaintiff is entitled under facts of case as against defendant properly suable in that county can be obtained only in suit in which both defendants are parties. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—*Harris v. Foster*, 261 S.W.2d 860.—Venue 22(4).

Tex.Civ.App.—Austin 1953. Where plaintiff's action against owner and operator of truck which collided with plaintiff's automobile, while truck was being negligently operated, and while truck was carrying over-length load, could be enforced in county where collision occurred without joinder of defendant, whose only connection with truck was that he had executed application to state highway department for permit to haul over-length load in truck, defendant was not "necessary party" to suit within venue statute. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—*Harris v. Foster*, 261 S.W.2d 860.—Venue 22(6).

Tex.Civ.App.—Austin 1949. Where plaintiff sought to set aside deed transferring a portion of his share of decedent's estate to administratrix who was to hold a half interest therein for benefit of her sister, sister of administratrix was a "necessary party". Rules of Civil Procedure, rule 39.—*Putnam v. Heissner*, 220 S.W.2d 701.—Can of Inst 35(1).

Tex.Civ.App.—Austin 1945. In suit to cancel deed, homestead right of defendant's wife was involved, and wife thereby became a "necessary party" to suit to settlement agreement divesting defendant of interest in land, and to agreed judgment itself.—*Behrens v. Behrens*, 186 S.W.2d 697.—Compromise 4; Home 212; Judgment 693.

Tex.Civ.App.—Austin 1940. The state board of education to which school district bonds had been sold is a "necessary party" to suit contesting validity of bond issue.—*Landrum v. Centennial Rural High School Dist.*, 146 S.W.2d 799, writ dismissed, correct.—Schools 97(4.5).

Tex.Civ.App.—Austin 1938. The Railroad Commission is a "necessary party" to a suit to set aside an order granting a permit to drill an oil well as an exception to spacing rule. Vernon's Ann.Civ.St. art. 6049c, § 8.—*L. P. & B. Oil Corporation v. Gulf Oil Corp.*, 115 S.W.2d 1034, writ refused.—Admin Law 673; Mines 92.35.

Tex.Civ.App.—Austin 1937. A dormant partner is not a "necessary party" to a suit concerning partnership property and need not be joined in an action concerning partnership obligations.—*Miller v. White*, 112 S.W.2d 487, dismissed.—Partners 199.

Tex.Civ.App.—Austin 1934. In action for breach of corporation's written contract, president of corporation held not "necessary party" so as to autho-

rise maintenance of action against president in county where action was maintainable against corporation of which county president was a nonresident, where president was not a party to contract, and hence was not liable thereon with corporation. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Staples v. Harris & Harris, 76 S.W.2d 784.—Venue 22(3).

Tex.Civ.App.—Austin 1933. Wife signing notes and trust deed being "necessary party" to suit to declare notes usurious, there was required identity of parties in such suit and in subsequent foreclosure suit involving same notes wherein wife was necessary party to sustain plea in abatement in foreclosure suit.—Stokes v. Temple Trust Co., 59 S.W.2d 849.—Abate & R 9.

Tex.Civ.App.—Austin 1933. Wife signing notes and trust deed held "necessary party" to suit to declare notes usurious.—Stokes v. Temple Trust Co., 59 S.W.2d 849.—Hus & W 221.

Tex.Civ.App.—Austin 1932. Plea of privilege of custodian of notes on which plaintiff sought entry of credit in such amount as might be established against nonresident owner thereof for its breach of warranty and fraud held properly overruled; custodian being "necessary party" to the suit. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—American Soda Fountain Co. v. Hairston Drug Co., 52 S.W.2d 764.—Venue 22(3).

Tex.Civ.App.—San Antonio 1975. In suit to, inter alia, foreclose lien securing promissory note and to set aside subordination agreement by which bank's lien was made superior to plaintiffs', bank, which was not alleged to have committed any fraud or even to have had any part in execution of subordination agreement, was not, for purposes of venue exception that suit may be maintained in county in which suit is maintainable against one or more of defendants against all necessary parties, "necessary party" to plaintiffs' claim that subordination agreement was procured through fraud of other defendants. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Preissman v. Continental-Bank of Texas, 524 S.W.2d 579, dismissed.—Venue 22(4).

Tex.Civ.App.—San Antonio 1972. Maker was "necessary party" to suit against endorser on check, within venue statute authorizing plaintiff who sues two or more nonresident defendants in county where venue is proper as to one defendant to maintain venue in such county as to all necessary parties to such cause of action. Vernon's Ann.Civ. St. arts. 1986, 1987, 1995, subd. 29a.—First State Bank & Trust Co. of Rio Grande City v. Colpaugh, 489 S.W.2d 675.—Venue 22(4).

Tex.Civ.App.—San Antonio 1954. Where suit is properly maintainable against one defendant in county other than county of residence and plaintiff therein joins another as defendant and seeks to sustain venue as to him as necessary party, such other defendant is "necessary party" if complete relief to which plaintiff is entitled under facts of case against defendant properly suable in that county can be obtained only in suit to which both defendants are parties. Vernon's Ann.Civ.St. art.

1995, subd. 29a.—Amberson v. F. G. Rodgers & Co., 271 S.W.2d 846, dismissed.—Venue 22(4).

Tex.Civ.App.—San Antonio 1954. In suit involving claims by plaintiff against defendant as independent executor and defendant individually for payment for services rendered, defendant individually was "necessary party" to afford plaintiff complete relief, and suit against defendant individually was properly maintainable in county in which estate was being administered although defendant was nonresident of county. Vernon's Ann.Civ.St. art. 1995, subds. 6, 29a.—Amberson v. F. G. Rodgers & Co., 271 S.W.2d 846, dismissed.—Ex & Ad 436.

Tex.Civ.App.—San Antonio 1952. In action for foreclosure of chattel mortgage lien for purchase price of pipe against buyer and owner of well in which pipe was used, well owner was a "necessary party" within venue statute, and venue which was properly laid against buyer in county in which account was payable was properly laid in same county against well owner. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Skinner v. Alice Pipe & Supply Co., 251 S.W.2d 752.—Venue 22(6).

Tex.Civ.App.—San Antonio 1952. Alleged buyer of goods in violation of Bulk Sales Law was not a "necessary party" to suit against seller upon verified account of various items he had agreed to pay for within venue statute exception permitting defendant to be sued outside county of his residence where venue is properly laid in another county and he is a necessary party to the suit. Vernon's Ann.Civ.St. art. 4001; art. 1995, subd. 29a.—Reynolds v. Groce-Wearden Co., 250 S.W.2d 749, writ refused.—Venue 22(6).

Tex.Civ.App.—San Antonio 1949. Wife is not a "necessary party" to a suit involving title to land which is husband's separate property or is property which belongs to the community, except in those cases where plea of homestead would in itself be a defense to the suit.—Gonzales v. Gonzales, 224 S.W.2d 520, writ refused.—Hus & W 221, 270(5).

Tex.Civ.App.—San Antonio 1947. County was a "necessary party" in a suit by property-owning and taxpaying citizens of county against county judge and county commissioners to enjoin issuance and sale of toll causeway revenue bonds and construction of a causeway in county. Vernon's Ann.Civ.St. arts. 6795b, 6795b-1; Rules of Civil Procedure, rule 33.—Prowse v. Wilson, 203 S.W.2d 791.—Counties 196(6).

Tex.Civ.App.—San Antonio 1945. A husband is a "necessary party" to a suit involving wife's separate property. Vernon's Ann.Civ.St. arts. 1983-1985, 3716.—Garcia v. Galindo, 189 S.W.2d 12, writ refused w.o.m.—Hus & W 221.

Tex.Civ.App.—San Antonio 1944. One joint tortfeasor is not "necessary party" to suit against another such tortfeasor.—Roberson v. Hunt, 179 S.W.2d 315.—Parties 31.

Tex.Civ.App.—San Antonio 1943. Truck owner, as third party defendant, was not a "necessary party" in action brought in one county under exception 24 to venue statute by bus passenger against

bus company for injuries sustained in collision between bus and truck, wherein bus company filed actions over and against truck owner claiming contribution, and venue over truck owner could not be maintained in such county under exception 29a over assertion of truck owner's privilege to be sued in county of his domicile. Vernon's Ann.Civ.St. arts. 1995, subds. 24, 29a, 2212; Rules of Civil Procedure, rule 38.—Union Bus Lines v. Byrd, 178 S.W.2d 544, certified question answered 177 S.W.2d 774, 142 Tex. 257.—Venue 22(10).

Tex.Civ.App.—San Antonio 1941. A specific devise under a will which disposed of land involved in a partition proceeding by a residuary clause was not a "necessary party" to the proceeding, she having been given no interest in the land involved therein.—Gallagher v. O'Brien, 158 S.W.2d 345.—Partit 46.1.

Tex.Civ.App.—San Antonio 1941. A sub-vendee of realty was not a "necessary party" to proceedings by original vendor to foreclose vendor's lien.—Williams v. Coleman-Fulton Pasture Co., 157 S.W.2d 995, writ refused w.o.m.—Ven & Pur 279.

Tex.Civ.App.—San Antonio 1941. In action for death resulting from automobile collision, allegedly as result of negligence of son in driving automobile owned by his father, father was not a "necessary party" in suit against his son as such term is usually understood.—Moore v. Hoover, 150 S.W.2d 96.—Autos 234.

Tex.Civ.App.—San Antonio 1937. A judgment requiring a constable to amend a return upon execution was fundamentally erroneous, where the company, which was plaintiff in the judgment on which the order of sale was issued and purchaser at the sale, was not made a party, since company was a "necessary party."—Johnson v. Ballard, 111 S.W.2d 835.—App & E 672.

Tex.Civ.App.—San Antonio 1937. A suit by woman against her former husband and his alleged agent for criminal assault committed upon her by agent was not maintainable in county in which assault was alleged to have been committed, and of which former husband was not a resident, under statute providing that suit lawfully maintainable against any defendant in a certain county may be maintained there against all necessary parties, since husband was not a "necessary party" to suit against agent. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—White v. White, 105 S.W.2d 779.—Venue 22(7.1).

Tex.Civ.App.—San Antonio 1934. In action against resident receiver of defunct bank and non-resident defendants to establish title to notes and corporate stock, under allegations regarding receiver's disputed right to convey title to notes and stock, receiver held "necessary party," rendering action triable in county of receiver's residence. Vernon's Ann.Civ.St. art. 1995, subds. 4, 29a.—Holloway v. Smith, 68 S.W.2d 554.—Venue 22(3).

Tex.Civ.App.—San Antonio 1933. Executrix, whose testator assumed payment of note secured by trust deed, held "necessary party" to mortgagee's suit upon deficiency resulting from trustee's sale,

and properly sued in county where note was payable, along with mortgagors and testator's grantee, though executrix resided in another county, where land was situated. Vernon's Ann.Civ.St. art. 1995, subds. 5, 6, 29a, 30.—Key v. Alamo Nat. Co., 62 S.W.2d 1002, writ dismissed.—Venue 22(3).

Tex.Civ.App.—San Antonio 1932. Where workmen's suit against courthouse contractor involved money due from county, county held "necessary party"; hence venue was maintainable in such county. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Burwell v. Southwest Const. Co., 56 S.W.2d 255.—Venue 22(3).

Tex.Civ.App.—Dallas 1975. Generally, a defendant is a "necessary party" under venue statute provision that whenever there are two or more defendants in any suit brought in any county and such suit is lawfully maintainable therein as to any of such defendants, then such suit may be maintained in such county against any and all necessary parties thereto, if the complete relief to which the plaintiff is entitled as against another defendant properly suable in the county under a different exception to the venue statute can be obtained only in a suit to which both defendants are parties. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Yarbrough v. John Deere Indus. Equipment Co., 526 S.W.2d 188.—Venue 22(4).

Tex.Civ.App.—Dallas 1968. Phrase "necessary party" of venue statute means one whose joinder is necessary to afford plaintiff full relief, which is obtainable only in suit to which both defendants are parties. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Miller & Miller Auctioneers, Inc. v. Hillcrest State Bank of University Park, 430 S.W.2d 61.—Venue 22(4).

Tex.Civ.App.—Dallas 1963. One who acquired title to property by separate foreclosure action and sheriff's sale was not only a "proper party" but a "necessary party" to former property owner's suit to set aside default judgment and sheriff's sale and deed issued pursuant thereto and was properly permitted to intervene. Rules of Civil Procedure, rule 39(a).—American Spiritualist Ass'n v. City of Dallas, 366 S.W.2d 97.—Judgm 457.

Tex.Civ.App.—Dallas 1950. Where owner of night club, erected by him on lot leased from lot owner under lease prohibiting assignment of lease without lot owner's consent, obtained a writ of dispossession in forcible entry and detainer proceeding against purchaser of club, and sold club thereafter to third parties with lot owner's consent, lot owner was "necessary party" to first purchaser's mandamus proceeding against sheriff to enforce execution of writ of restitution obtained in forcible entry and detainer proceeding. Rules of Civil Procedure, rule 740; Vernon's Ann.Civ.St. art. 5237.—Dexter v. Crosslin, 230 S.W.2d 383, ref. n.r.e.—Mand 151(1).

Tex.Civ.App.—Dallas 1941. A "necessary party" is one who is so vitally interested in the subject matter of the litigation that a valid decree cannot be entered without his presence as a party and in applying the rule to defendants, the test is not

whether the plaintiff could obtain any relief without the joinder of both defendants, but whether he could obtain the complete relief sought without their joinder. Vernon's Ann.Civ.St. art. 1995, subds. 5, 29a.—Biggs v. Southland Life Ins. Co., 150 S.W.2d 149.—Parties 18, 29.

Tex.Civ.App.—Dallas 1940. An attorney who, under a separate agreement with broker, secured partial interest in commissions allegedly due broker was not a "necessary party" to broker's action to recover commissions.—First Nat. Bank in Dallas v. Smith, 141 S.W.2d 735, writ dismissed, correct.—Brok 81.

Tex.Civ.App.—Dallas 1940. One merely claiming some interest in mortgaged property, upon which foreclosure is sought, is not a "necessary party". Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Northern Illinois Finance Corp. v. Sheridan, 141 S.W.2d 434.—Chat Mtg 275.

Tex.Civ.App.—Dallas 1940. One who allegedly claimed some right in automobile was not a "necessary party" to action by foreign corporation on note secured by chattel mortgage on the automobile so as to render him suable in county in which corporation had allegedly acquired a residence, over his plea of privilege wherein he alleged right to be sued in county of his residence, in absence of allegation or proof that he was in possession of the automobile or from whom he acquired his interest, or the nature of his claim. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Northern Illinois Finance Corp. v. Sheridan, 141 S.W.2d 434.—Venue 22(6).

Tex.Civ.App.—Dallas 1940. The law granting an aggrieved wife right to contract for services of an attorney, and the court to fix and allow reasonable attorney's fee, vests in attorney a present beneficial interest in the claim which may not be divested by client without a judicial ascertainment, and an attorney who holds a contract of employment is neither a "necessary party" nor a "proper party" in suit for divorce.—Jacks v. Teague, 136 S.W.2d 896, dismissed.—Divorce 197.

Tex.Civ.App.—Dallas 1939. A "necessary party" within the venue statute is one who is so vitally interested in the subject matter of the litigation that a valid decree cannot be rendered without his presence as a party. Vernon's Ann.Civ.St. art. 1995, § 29a.—Wood v. Fondren, 131 S.W.2d 1070.—Venue 22(4).

Tex.Civ.App.—Dallas 1939. A suit on a note and to foreclose a trust deed securing the note was required to be maintained in the county of the mortgagor's residence as against a nonresident grantee of the realty encumbered by the trust deed, since the grantee was a "necessary party" to the suit within the venue statute. Vernon's Ann.Civ.St. art. 1995, §§ 4, 5, 29a.—Wood v. Fondren, 131 S.W.2d 1070.—Venue 22(6).

Tex.Civ.App.—Dallas 1938. In wife's suit for divorce brought in Dallas county, mother of husband who lived in Tarrant county and allegedly held legal title to property located in such county in trust for her son, pursuant to deed absolute executed before

marriage, was not a "necessary party" under the venue statute so as to authorize maintenance of the suit as against her in Dallas county. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Scott v. Scott, 126 S.W.2d 525.—Venue 22(7.1).

Tex.Civ.App.—Dallas 1936. In insured's suit for damages for anticipatory breach of insurer's obligation under disability clause of life policy, based upon insurer's purported cancellation of disability clause, beneficiary in the life feature of the insurance contract held not "necessary party."—Needham v. American Nat. Ins. Co., 97 S.W.2d 1016, writ dismissed.—Insurance 1940.

Tex.Civ.App.—Dallas 1936. Where mortgagee sought joint decree foreclosing mortgage lien on truck and truck tank, against mortgagor and buyer of tank from mortgagor, buyer was "necessary party," and therefore suable in county where action was maintainable against mortgagor, though buyer was resident of another county. Vernon's Ann.Civ. St. art. 1995, subds. 5, 29a.—Jones-Yates Co. v. Harrison, 96 S.W.2d 238.—Venue 22(6).

Tex.Civ.App.—Dallas 1934. In insurer's suit against insurer who assumed reinsurer's contract, receiver of reinsurer, made party defendant to defendant's cross-action, held not "necessary party" to principal suit so as to authorize maintenance of suit in county other than where receiver was appointed. Vernon's Ann.Civ.St. art. 1995, subds. 4, 29a.—Commercial Standard Ins. Co. v. Morrow, 68 S.W.2d 540.—Venue 22(3).

Tex.Civ.App.—Dallas 1933. Where plaintiff sought joint decree foreclosing mortgage lien on motortruck against buyer and codefendant to whom buyer's agent had delivered truck and who refused to surrender possession, codefendant held "necessary party," and therefore he was suable in county where action was maintainable against buyer. Vernon's Ann.Civ.St. art. 1995, subds. 5, 29a.—Christian v. Universal Credit Co., 63 S.W.2d 229, writ dismissed.—Venue 22(3).

Tex.Civ.App.—Dallas 1932. In suit to enjoin commissioners' court from accepting highway commission's proposal for improvement of alternate state highway route, commission was not "necessary party" (Vernon's Ann.Civ.St. arts. 6663, 6673, 6674c, 6674n).—Alexander v. Singleton, 50 S.W.2d 893, writ refused.—High 107(1).

Tex.Civ.App.—Dallas 1930. Lessee under oil and gas lease held not "necessary party" to suit by lessor's assignee against lessor as guarantor of rent, and therefore lessee was not suable with guarantor in county other than that of lessee's residence. Vernon's Ann.Civ.St. art. 1995, subds. 4, 29a.—Duvall v. Boyer, 35 S.W.2d 181.—Venue 22(2).

Tex.Civ.App.—Texarkana 1975. A "necessary party" within meaning of venue statute authorizing suit to be maintained against necessary parties in a county other than their legal residence is one whose joinder is necessary in order to afford plaintiff the full relief to which he is entitled. Vernon's Ann. Civ.St. art. 1995, subd. 29a.—Emery Air Freight Corp. v. Hall, 520 S.W.2d 956.—Venue 22(4).

Tex.Civ.App.—Texarkana 1957. Where plaintiffs in suit for fraud by which individual defendant, allegedly acting for his own benefit and as agent for codefendant corporation, induced plaintiffs to purchase stock of corporation at price greatly in excess of its value sought to maintain venue under subd. 7 of venue statute in county in which fraud allegedly was committed, defendant corporation was not a “necessary party” within subd. 29a of venue statute. Vernon’s Ann.Civ.St. art. 1995, subds. 7, 29a.—Harrington v. North Am. Union Life Ins. Co., 308 S.W.2d 580, mandamus overruled.—Venue 22(8).

Tex.Civ.App.—Texarkana 1950. Owner of ambulance which allegedly took plaintiffs to hospital other than one that they requested to be taken to after automobile collision was not a “necessary party” to suit against driver of other automobile involved in the collision, and, hence, suit against ambulance owner was not maintainable in county other than its residence under exception 29a of venue statute providing that, where a suit is maintainable in the county against one defendant, it may be maintained in such county against all necessary parties. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Rains-Talley Funeral Home v. Adams, 231 S.W.2d 999.—Venue 22(6).

Tex.Civ.App.—Texarkana 1950. A “necessary party” to a suit is one who is so vitally interested in the subject matter of a litigation that a valid decree cannot be rendered without his presence as a party.—Rains-Talley Funeral Home v. Adams, 231 S.W.2d 999.—Parties 18, 29.

Tex.Civ.App.—Texarkana 1945. A suit on notes for sums borrowed by defendant makers and guarantor in consummation of joint adventure in buying, growing and selling hogs on guarantor’s ranch in county wherein notes were payable was maintainable therein against guarantor as “necessary party”. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Carter v. Texas State Bank of Jacksonville, 189 S.W.2d 782.—Venue 22(7.1).

Tex.Civ.App.—Texarkana 1938. A purchaser’s wife who had community interest in land and homestead rights therein was not a “necessary party” to suit by holder of vendor’s lien notes, which were in default, for rescission and cancellation of conveyance, and hence judgment in rescission suit in favor of holder against purchaser alone was res judicata and in bar of wife’s right to prosecute suit for recovery of land on payment of purchase-money debt.—Bothwell v. Farmers & Merchants State Bank & Trust Co., 118 S.W.2d 464, writ refused.—Judgm 693.

Tex.Civ.App.—Texarkana 1935. Suit against individual defendant who was jointly liable for payment of draft with defendant bank against which suit was properly brought in county where cause of action arose held maintainable in such county, since individual defendant was a “necessary party” thereto, as against plea of privilege to be sued in county of his residence. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Broderick v. Galt, 81 S.W.2d 268.—Venue 22(6).

Tex.Civ.App.—Texarkana 1934. Person at whose instance material was furnished for erection of oil well derrick, and who owned oil and gas lease on realty upon which derrick was erected, held “necessary party” to suit to foreclose lien, since debt must be established before judgment of foreclosure of lien could be had.—Farrell v. Jowell, 76 S.W.2d 546.—Mech Liens 263(1).

Tex.Civ.App.—Texarkana 1932. In trespass to try title, brought by vendor, who agreed to cancel purchase-money notes in return for mineral rights, against person to whom purchaser executed mineral deed, purchaser held “necessary party.”—Franklin v. Bramlette, 48 S.W.2d 752, writ refused.—Ven & Pur 299(1).

Tex.Civ.App.—Amarillo 1977. “Necessary party” for venue purposes is one without whose presence no effectual decree could be rendered as between the plaintiff and the defendant.—Key v. Davis, 554 S.W.2d 60.—Venue 22(4).

Tex.Civ.App.—Amarillo 1975. Within meaning of statute providing that, whenever there are two or more defendants in a suit brought in a county where no defendant resides or is domiciled but where such suit is maintainable therein as to any defendant under some other exception to the general venue statute, such suit may be maintained in such county against any and all necessary parties to the suit, a “necessary party” is one whose joinder is necessary to afford plaintiff the full relief to which he is entitled. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—B & C Const. Co. v. Grain Handling Corp., 521 S.W.2d 98.—Venue 22(4).

Tex.Civ.App.—Amarillo 1968. A “necessary party” within venue statute providing that, when two or more defendants are sued in any county in state, and suit is lawfully maintainable therein under venue statute as to any one such defendant, suit may be maintained against any and all necessary parties, is one whose joinder is necessary to afford plaintiff full relief to which he is entitled. Vernon’s Ann. Civ.St. art. 1995, subd. 29a.—Collins v. Mize, 436 S.W.2d 938, writ granted, reversed in part 447 S.W.2d 674.—Venue 22(4).

Tex.Civ.App.—Amarillo 1968. A “necessary party” within venue statute authorizing suit to be maintained against necessary parties in county other than their legal residence is one whose joinder is necessary in order to afford the plaintiff the full relief to which he is entitled in suit. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Zable v. Huff, 432 S.W.2d 717.—Venue 22(4).

Tex.Civ.App.—Amarillo 1968. A “necessary party” to a suit as used in venue statute is one whose joinder is necessary to afford the plaintiff the full relief to which he is entitled. Vernon’s Ann.Civ.St. art. 1995, subds. 3, 27, 29a.—J. I. Case Co. v. Darcy, 424 S.W.2d 501, writ dismissed by agreement.—Venue 22(4).

Tex.Civ.App.—Amarillo 1963. Will contest seeking to delete from will as probated provision that devised land should be subject to indebtedness against it at testator’s death vitally affected residu-

ary devisee, and she was a "necessary party" to the contest.—*Schoenhals v. Schoenhals*, 366 S.W.2d 594, ref. n.r.e.—*Wills* 265.1.

Tex.Civ.App.—Amarillo 1961. "Necessary party" to suit is one who is so vitally interested in subject matter of litigation that valid decree cannot be rendered without his presence as party.—*Richardson v. Milner*, 345 S.W.2d 449, ref. n.r.e.—*Parties* 18, 29.

Tex.Civ.App.—Amarillo 1957. Every person whose joinder is necessary to afford the plaintiff the full relief to which he is entitled in the suit which can thus be maintained in that county is a "necessary party" within venue statute. *Vernon's Ann. Civ.St. art. 1995*, subd. 29a.—*Haney v. Henry*, 307 S.W.2d 649.—*Venue* 22(4).

Tex.Civ.App.—Amarillo 1954. A codefendant is a "necessary party", suable in county other than his residence under provisions of venue statute exception 29a, if complete relief to which plaintiff shows himself entitled to recover, as against defendant properly suable in county where suit is filed, can be obtained only in suit in which both defendants are parties. *Vernon's Ann.Civ.St. art. 1995*, subd. 29a.—*Kasishke v. Ekern*, 278 S.W.2d 274.—*Venue* 22(4).

Tex.Civ.App.—Amarillo 1951. Where tenant mentioned in defendant's pleading in suit to foreclose chattel mortgage lien and deed of trust lien had no equity of redemption, and became such tenant with notice of deed of trust lien, tenant was not a "necessary party" to the foreclosure suit.—*Stroup v. Rutherford*, 238 S.W.2d 612, writ refused.—*Mtg* 427(1).

Tex.Civ.App.—Amarillo 1949. In wife's action for divorce where husband filed a cross-action against another party for alienation of affections and husband sought damages against him alone, cross-defendant was not a "necessary party" within exception 29a of the venue statute so as to justify overruling of cross-defendant's motion for change of venue to county of his residence. *Vernon's Ann.Civ.St. art. 1995*, subd. 29a.—*Williams v. Rearick*, 218 S.W.2d 225.—*Venue* 22(10).

Tex.Civ.App.—Amarillo 1947. A "necessary party" to a judicial proceeding is one so vitally interested in the matter that a valid judgment or decree cannot be rendered without his presence as a party.—*Fair v. Mayfield Feed & Grain Co.*, 203 S.W.2d 801.—*Parties* 29.

Tex.Civ.App.—Amarillo 1947. Neither seller nor broker who as agent for seller negotiated sale of goods was a "necessary party" to buyer's suit for breach of contract to deliver goods sold so as to maintain venue of suit as against each defendant in county other than that of his residence, in absence of venue facts other than residence of codefendant. *Vernon's Ann.Civ.St. art. 1995*, subd. 29a.—*Fair v. Mayfield Feed & Grain Co.*, 203 S.W.2d 801.—*Venue* 22(7.1).

Tex.Civ.App.—Amarillo 1942. A wife, abandoned by her husband, was not a "necessary party" to subsequent suit against him on note constituting

community debt, and is bound by judgment against him therein for amount of debt and foreclosure of plaintiff's attachment lien, though she was not named as party thereto.—*Hall v. Aloco Oil Co.*, 164 S.W.2d 861, writ refused.—*Hus & W* 270(5); *Judgm* 693.

Tex.Civ.App.—Amarillo 1941. Where purchaser of school land executed deed of trust to county judge as trustee to secure vendor's lien notes, payment of which purchaser's grantee assumed, and on default in payment of interest and taxes substitute trustee appointed on death of original trustee sold land and executed trustee's deed to the county which thereafter sold land to second purchaser, in first purchaser's trespass to try title action against second purchaser, county was not a "necessary party". *Vernon's Ann.Civ.St. arts. 7370, 7372*.—*Smith v. Elliott*, 149 S.W.2d 1067, writ refused.—*Tresp* to T T 27.

Tex.Civ.App.—Amarillo 1939. In suit on note and to foreclose trust deed, devisee of mortgaged property who filed plea of privilege was a "necessary party" within venue statute, since, although devisee was not in strict sense a "grantee" of property, she became to all intents and purposes the owner of the land through the devise and without her presence no effective foreclosure of trust deed could have been had. *Vernon's Ann. Civ.St. art. 1995*, subd. 5.—*Thane v. Dallas Joint Stock Land Bank of Dallas*, 129 S.W.2d 795.—*Venue* 22(6).

Tex.Civ.App.—Amarillo 1939. A "necessary party" to a judicial proceeding is one who is so vitally interested in the matter that a valid judgment or decree cannot be rendered without his presence as a party.—*Pierson v. Pierson*, 128 S.W.2d 108, reversed 150 S.W.2d 788, 136 Tex. 310.—*Parties* 21.

Tex.Civ.App.—Amarillo 1938. A "necessary party" is one who is so vitally interested in the object or subject-matter of the suit that a valid judgment cannot be rendered without his presence.—*Harrison v. MacGregor*, 112 S.W.2d 1095.

Tex.Civ.App.—Amarillo 1936. "Necessary party" is one without whose presence before the court no adjudication of any of subject-matter involved in litigation can be had.—*Dial v. Crosby County*, 96 S.W.2d 534.—*Parties* 32.

Tex.Civ.App.—Amarillo 1934. Where bank, acting on owner's instructions, forwarded to codefendants in another county cotton which was first stored in bank's name, but codefendants were informed of true owner before they sold cotton without notice and attempted to apply proceeds on claim against bank, venue of action for conversion against bank and nonresident codefendants could not be sustained in county in which owner resided and bank did business against codefendants' plea of privilege to be sued in county of their residence, since there was no joint liability and bank was not a "necessary party" to action against parties selling cotton. *Vernon's Ann.Civ.St. art. 1995*, subds. 4, 29a.—*Pray v. Cleveland Compress & Service Co.*, 71 S.W.2d 1108.—*Venue* 22(3).

Tex.Civ.App.—Amarillo 1932. Defendant cannot be required to answer suit brought against him and another in county whereof he is not resident, unless he is “necessary party”. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Umberson v. Krueger, 49 S.W.2d 528, certified question accepted Krueger v. Hall, 61 S.W.2d 985, 122 Tex. 547.—Venue 22(3).

Tex.Civ.App.—Amarillo 1932. Alleged fraudulent grantee is not “necessary party” to suit against grantor on notes and to subject land to payment of debt, hence cannot be sued with grantor in county whereof grantee is not resident. Vernon’s Ann.Civ. St. art. 1995, subd. 29a.—Umberson v. Krueger, 49 S.W.2d 528, certified question accepted Krueger v. Hall, 61 S.W.2d 985, 122 Tex. 547.—Venue 22(3).

Tex.Civ.App.—Amarillo 1920. A “necessary party” is one who is so vitally interested in the matter that a valid decree cannot be rendered without his presence as a party.—Bingham v. Graham, 220 S.W. 105.—Parties 1.

Tex.Civ.App.—El Paso 1942. Where plaintiff sued in trespass to try title for realty alleged to be section 103, but defendants made no claim to section 103 and claimed an oil and gas lease from the state to section 104 by lease from the surface owners of section 104, one of whom was plaintiff, on behalf of the state and themselves, the state was not an “indispensable party” or a “necessary party”, and trial court erred in sustaining a plea in abatement on ground that the state was such a party.—Permian Oil Co. v. Western Oil & Royalty Co., 164 S.W.2d 21.—Tresp to T T 27.

Tex.Civ.App.—El Paso 1942. The state is a “necessary party” to a suit against the state board of education, its individual members, and various publishing houses to restrain the purchase of textbooks under certain allegedly void contracts.—Bryan v. Texas State Bd. of Ed., 163 S.W.2d 837, writ refused w.o.m.—States 203.

Tex.Civ.App.—El Paso 1941. Where all taxes due state had been paid to it, state was not a “necessary party” to a suit by a former owner to set aside a tax judgment and sale thereunder on ground that there was no legal notice of judgment ordering the sale.—Nymon v. Eggert, 154 S.W.2d 157.—Tax 806.

Tex.Civ.App.—El Paso 1940. Where automobile fire policy recited lien in favor of finance company and dealer, and finance company in cross-action averred that it was the legal holder and owner of all right of the dealer and of all the liens securing insured’s indebtedness, and insurer was party to an agreement made in open court to the effect that finance company was entitled to recover on its cross-action the amount claimed by the dealer, and under the undisputed evidence, dealer had no interest in the proceeds of the policy, the dealer was not a “necessary party” in an action on policy.—General Exchange Ins. Corp. v. Appling, 144 S.W.2d 699.—Insurance 3567.

Tex.Civ.App.—El Paso 1940. The right to sue for community indebtedness is that of the husband in ordinary cases, and a husband is ordinarily a “necessary party” to the suit for the wife’s separate

property.—Savage Oil Co. v. Johnson, 141 S.W.2d 994, writ dismissed, correct.—Hus & W 221, 270(1).

Tex.Civ.App.—El Paso 1938. As respects venue, in suit to recover title and possession of automobile or in alternative to foreclose a mortgage on such automobile, party claiming automobile under the mortgagor was a “necessary party,” since without him complete relief could not be afforded the mortgagee.—Williams v. Mackey Motor Co., 118 S.W.2d 913.—Venue 22(6).

Tex.Civ.App.—El Paso 1938. In action to foreclose chattel mortgage on horses, which nonresident had bought from third persons, who had allegedly converted the horses with knowledge of the chattel mortgage, nonresident was a “necessary party,” and not entitled to be sued in the county of his residence. Vernon’s Ann. Civ.St. art. 1995, subds. 4, 5, 29a.—Williams v. First Nat. Bank, 115 S.W.2d 1209, dismissed.

Tex.Civ.App.—El Paso 1938. Generally, a purchaser pendente lite need not be made a party to the record, and is not even a “necessary party,” but the suit may proceed in the name of the original parties, for the assignee takes subject to the final adjudication between the original litigants, and a judgment would be a complete bar to any suit or claim on the part of either the assignor or the assignee.—Jackson v. Bowie, 114 S.W.2d 342, dismissed.—Parties 18.

Tex.Civ.App.—El Paso 1936. In action against principal and against sureties who promised payment at Winona, Minn., or Dallas, Dallas county, Tex., at promisee’s option of indebtedness owing from principal to promisee, suit against principal held maintainable in Dallas county, where venue had been laid as to sureties, since principal being party primarily liable was “necessary party” to suit against sureties. Vernon’s Ann.Civ.St. art. 1995, subds. 5, 29a.—J. R. Watkins Co. v. Webb, 97 S.W.2d 284.—Venue 22(2).

Tex.Civ.App.—El Paso 1936. Contracting company which was asserting some claim to machinery inferior to buyer’s claim, and whose joinder was necessary to bind it by judgment of foreclosure of purchase notes, held “necessary party” to seller’s suit to enforce payment of notes.—Northwest Engineering Co. v. Chadwick Machinery Co., 93 S.W.2d 1223, writ dismissed.—Chat Mtg 275.

Tex.Civ.App.—El Paso 1936. Party claiming interest in funds sought to be recovered by plaintiffs from insolvent bank held not “necessary party” so as to sustain venue in county where such party was domiciled within statute placing venue against two or more defendants in county in which it was maintainable as to any of defendants. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Willis v. Shaw, 90 S.W.2d 867.—Venue 22(6).

Tex.Civ.App.—El Paso 1934. In suit to restrain constable from selling automobile under judgment, constable held not “necessary party” so as to authorize maintenance of suit in county of his residence as against plea of privilege of corporation holding judgment to be sued in county of its residence

where it was not shown that wrongful levy was made on automobile, since under such circumstances, levy would not constitute "trespass" under the venue statute. Vernon's Ann.Civ.St. art. 1995, subds. 4, 17, 23.—American Mortg. Corp. v. Busch, 75 S.W.2d 317.—Venue 22(3).

Tex.Civ.App.—El Paso 1934. Nonresident maker jointly and severally liable with payee on check held "necessary party" to bank's suit on check so as to render suit triable in county of payee's and bank's residence. Vernon's Ann.Civ.St. art. 1995, subd. 4.—Mercantile Bank & Trust Co. of Texas v. Greenwood, 67 S.W.2d 930.—Venue 22(3).

Tex.Civ.App.—El Paso 1933. In suit on open verified account for goods sold and delivered to wife, husband was "necessary party" so that action against him could be lawfully brought in county in which it was maintainable against wife and of which neither were residents. Vernon's Ann.Civ.St. arts. 1984, 1995, subd. 29a.—A. Harris & Co. v. Cook, 62 S.W.2d 205.—Venue 22(3).

Tex.Civ.App.—El Paso 1928. Converter was not "necessary party" to suit against mortgagor within venue statute relating to suits against two or more defendants. Gen. & Sp. Acts 40th Leg., 1st Called Sess., c. 72, § 2.—Wool Growers' Central Storage Co. v. Edwards, 10 S.W.2d 577.—Venue 22(3).

Tex.Civ.App.—Beaumont 1979. Where plaintiff sued drilling company on written contract for lease of pump and sued drilling company's president on \$10,000 deposit check, plaintiff could obtain full relief against drilling company without joinder of president; thus, president was not a "necessary party" within venue subdivision and cause could be severed and claim against president could be transferred to county of president's residence. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Barnes v. Waters Equipment Co., Inc., 582 S.W.2d 580.—Action 60; Venue 74.

Tex.Civ.App.—Beaumont 1978. A "necessary party" to a suit is one whose joinder is necessary to afford plaintiff full relief which is obtainable only in the suit to which both defendants are parties.—Eastex Camper Sales, Inc. v. Lanclos, 573 S.W.2d 903.—Parties 29.

Tex.Civ.App.—Beaumont 1942. A "necessary party" to suit is one so vitally interested in object or subject matter thereof that valid judgment cannot be rendered without his presence.—Tarrant v. Texas Co., 166 S.W.2d 772.—Parties 18.

Tex.Civ.App.—Beaumont 1942. A "necessary party" to a suit is one who is so vitally interested in the subject-matter of the litigation that a valid decree cannot be rendered without his presence as a party.—Tarrant v. Texas Co., 166 S.W.2d 772.—Parties 29.

Tex.Civ.App.—Beaumont 1942. The driver of a truck involved in a collision in Harris County, who was merely an employee of the corporate owner of the truck and who had no interest therein other than in discharging his duty to his employer, was not a "necessary party" within Exception 29a of the venue statute so as to authorize maintenance of the

suit as against him in the county where the corporate employer maintained an agent where the driver resided in Harris County and the collision occurred there. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Tarrant v. Texas Co., 166 S.W.2d 772.—Venue 22(7.1).

Tex.Civ.App.—Beaumont 1942. A senior lien holder is not a "necessary party" in an action by a junior lien holder to foreclose his lien.—Parker v. Chambers, 159 S.W.2d 945.—Liens 22.

Tex.Civ.App.—Beaumont 1942. In suit to foreclose materialmen's lien on realty, holder of senior lien on the realty was not a "necessary party". Vernon's Ann.Civ.St. art. 5459.—Parker v. Chambers, 159 S.W.2d 945.—Mech Liens 263(6).

Tex.Civ.App.—Beaumont 1941. In suit to recover title and possession of road bonds issued by commissioners' precinct, or, in the alternative, to recover damages from commissioners' precinct, or, in the further alternative, to recover from commissioners' precinct the amount agreed to be paid plaintiffs for submitting a bid on the bonds regardless whether they were purchasers, where it appeared that bonds had been purchased by and issued to state board of education for benefit of permanent school fund and were being held by state treasurer, the state or state board of education was a "necessary party" to the suit. Vernon's Ann.Civ.St. art. 4378.—Lockhart v. A. W. Snyder & Co., 159 S.W.2d 132, modified 163 S.W.2d 385, 139 Tex. 411.—Counties 182.

Tex.Civ.App.—Beaumont 1941. An orphan who had lived with decedents, who were husband and wife, but who was not shown to have been legally adopted by the decedents was neither a "necessary party" nor a "proper party" to suit to partition community realty belonging to the decedents, since in order for orphan to have right to inherit portion of estate, she must have been legally adopted by the decedents as their child.—Feliczak v. Kopycinski, 153 S.W.2d 329.—Hus & W 272(4).

Tex.Civ.App.—Beaumont 1940. Generally, the father is a "necessary party" to an action to recover damages for the loss of the earnings of a minor son.—Houston Oxygen Co. v. Davis, 145 S.W.2d 300, reversed 161 S.W.2d 474, 139 Tex. 1, 140 A.L.R. 868.—Parent & C 7(6).

Tex.Civ.App.—Beaumont 1940. Where father and mother were divorced when child was very young, mother remarried and supported child, father did not contribute to child's support and did not keep in touch with child, and mother received child's earnings when he became old enough to work, father "abandoned" child and surrendered custody to mother who, therefore, was entitled to child's services and earnings and could maintain suit for loss of child's services as result of injuries to child in automobile accident, to which suit father was not a "necessary party".—Houston Oxygen Co. v. Davis, 145 S.W.2d 300, reversed 161 S.W.2d 474, 139 Tex. 1, 140 A.L.R. 868.—Parent & C 7(6).

Tex.Civ.App.—Beaumont 1939. An alleged son of deceased employee was not a "necessary party"

to compensation proceeding, where evidence established that if he was a son of employee, he was a bastard without compensable interest in employee's life.—*Commercial Standard Ins. Co. v. Austin*, 128 S.W.2d 836, writ dismissed, correct.—*Work Comp* 1189.

Tex.Civ.App.—Beaumont 1938. In suit to remove cloud from title and for injunctive relief by owners of original land grant from state against persons asserting claim as discoverer of land as unsurveyed public school land, the state was not a "necessary party" and could not without its consent be made a party where the issues between the owners and the alleged discoverers would in no way involve or jeopardize the title of the state to the claimed vacancy. *Vernon's Ann.Civ.St. art. 5421c, § 8.*—*Sessums v. W. T. Carter & Bros.*, 121 S.W.2d 486, reversed *Short v. W. T. Carter & Bros.*, 126 S.W.2d 953, 133 Tex. 202, appeal dismissed 60 S.Ct. 140, 308 U.S. 513, 84 L.Ed. 438.—*Quiet T* 30(3); *States* 191.9(5).

Tex.Civ.App.—Beaumont 1937. In suit involving controversy over priority between mineral lease executed by corporation, under which plaintiff claimed, and lease executed by trustee appointed by bankruptcy court in corporate reorganization proceedings, corporation was not a "necessary party."—*Cowan v. Nixon*, 107 S.W.2d 693, reversed 135 S.W.2d 96, 134 Tex. 262.—*Parties* 29.

Tex.Civ.App.—Beaumont 1936. Suit against school district on school bond held maintainable in county in which school district was situated as against corporation which was nonresident of county but which had contracted with school district to refund bonds, including bond in controversy, and had been vouched into suit by school district, since corporation was a "necessary party" to suit.—*H. C. Burt & Co. v. French Independent School Dist.*, 99 S.W.2d 429.—*Venue* 22(10).

Tex.Civ.App.—Beaumont 1934. Action against sheriff and his surety for damages sustained because of sheriff's false return on citation held maintainable as against surety in county where citation was returnable, though such was not county of surety's residence, since surety was "necessary party" within statute permitting suit, maintainable against any defendant in one county, to be maintained there against all necessary parties. *Vernon's Ann.Civ.St. art. 1995, subds. 7, 29a.*—*Willis v. Victoria Bank & Trust Co.*, 76 S.W.2d 532.—*Venue* 22(3).

Tex.Civ.App.—Beaumont 1934. Vendor of land sold on contract which he assigned held not "necessary party" in purchaser's bill of review to set aside judgment obtained by vendor's sub-assignee terminating purchaser's interest in premises for default in payments, so as to be suable in county other than his residence where, at time bill was filed, vendor owned no interest in property sold.—*Turner v. Steigerwald*, 71 S.W.2d 540.—*Venue* 22(3).

Tex.Civ.App.—Waco 1969. Possessor of mortgaged air compressor which was nonresident of county and which had filed plea of privilege was, for venue purposes, a "necessary party" to action by

promisee to foreclose lien on compressor if complete relief to which promisee was entitled could not be obtained unless possessor was also party to action. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*Moody Day Co. v. Westview Nat. Bank, Waco*, 441 S.W.2d 294, writ dismissed.—*Venue* 22(6).

Tex.Civ.App.—Waco 1960. A "necessary party" to a suit as used in subdivision 29a, is one whose joinder is necessary to afford the plaintiff the full relief to which he is entitled in the suit which can thus be maintained in that county. *Vernon's Ann. Civ.St. art. 1995, subd. 29a.*—*Lewis Boggus Motors, Inc. v. Hill*, 340 S.W.2d 957, writ dismissed.—*Plead* 111.30.

Tex.Civ.App.—Waco 1959. The test of a "necessary party" within subd. 29a of the venue statute is whether the plaintiff can obtain the complete relief sought without the joinder of such party. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*Luse v. Union City Transfer*, 324 S.W.2d 935, writ dismissed.—*Venue* 22(4).

Tex.Civ.App.—Waco 1947. Where plaintiffs alleged a joint cause of action against store, which sold power saw, and against manufacturer thereof, in action in McLennan county for wrongful death of buyer of saw resulting from a defect therein, and there was no evidence that plaintiffs could not obtain full measure of their damages against either defendant, and venue as to store was sustainable because of a branch in McLennan county, manufacturer was not a "necessary party" within exception 29a to the venue statute and was entitled to have its plea of privilege sustained to be sued in Grayson county. *Vernon's Ann.Civ.St. art. 1995, subds. 23, 29a.*—*Jakes Power Saw Co. v. Womble*, 207 S.W.2d 206.—*Venue* 22(6).

Tex.Civ.App.—Waco 1946. Where plaintiff purchaser prayed for specific performance of land purchase contract, but pleadings disclosed that dominant purpose of suit was to recover title and possession from one who, with knowledge of plaintiff's contract, had obtained a conveyance from vendor, vendor was not a "necessary party."—*Antwine v. Reed*, 194 S.W.2d 614, reversed 199 S.W.2d 482, 145 Tex. 521.—*Spec Perf* 106(1).

Tex.Civ.App.—Waco 1942. In suit by married woman to reform deeds in partition where adverse party would acquire rights and titles against her, under statute requiring husband to be joined in suits for separate debts and demands against wife, husband was a "necessary party" and it was error to proceed with the suit in the absence of the joinder of the husband or appropriate allegations and proof made as to his refusal to join. *Vernon's Ann.Civ. St. arts. 1983, 1985.*—*Wade v. Wade*, 160 S.W.2d 127, reversed 167 S.W.2d 1008, 140 Tex. 339.—*Hus & W* 210(3).

Tex.Civ.App.—Waco 1941. To recover interest accruing during coverture on notes which constituted wife's separate property, husband was a "necessary party" to action, and his joinder with wife pro forma was wholly insufficient to authorize recov-

ery.—Cruse v. Archer, 153 S.W.2d 679.—Hus & W 270(5).

Tex.Civ.App.—Waco 1940. The Attorney General is a “proper party” defendant as representing the public interest, but is not a “necessary party” to bill for instructions of the court as to administration of a public charity, where gift is in hands of trustees charged specifically by donor with management of the gift for the cestui que trust, and no charges of waste or mismanagement are made against the trustees.—Miller v. Davis, 146 S.W.2d 1006, reversed 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Char 43.

Tex.Civ.App.—Waco 1940. A legatee to whom \$1 is bequeathed does not have such a substantial interest in the estate as to be a “necessary party” to suit for construction of will.—Miller v. Davis, 146 S.W.2d 1006, reversed 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Wills 700.

Tex.Civ.App.—Waco 1940. A university to which a bequest was left in a conditional provision for disposition of estate in the event that foundation named in will should not be created, was not a “necessary party” to suit for construction of will, where foundation was created before testator’s death.—Miller v. Davis, 146 S.W.2d 1006, reversed 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.—Wills 700.

Tex.Civ.App.—Waco 1939. In taxpayers’ suit against school district to enjoin performance of contract whereby children were to be transferred to an independent school district, independent school district was a “necessary party.”—Bays v. Wright, 132 S.W.2d 144.—Schools 111.

Tex.Civ.App.—Waco 1937. Generally, when a suit is brought to establish or recover a debt and to foreclose a mortgage to enforce payment of the debt, and mortgagee has notice that mortgagor has conveyed incumbered property to another, grantee is a “necessary party” to foreclosure suit. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Pioneer Building & Loan Ass’n v. Gray, 126 S.W.2d 995, certified question answered 125 S.W.2d 284, 132 Tex. 509.—Mtg 427(4).

Tex.Civ.App.—Waco 1937. Grantee of mortgaged real estate was “necessary party” to suit for foreclosure of trust deed securing note payable to plaintiff in county where suit was brought, within exception, added to venue statute, that suit against two or more defendants in county where it is maintainable under such statute against any of them may be maintained therein against all “necessary parties,” so as to authorize grantee’s joinder as defendant though he resided in another county. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Pioneer Building & Loan Ass’n v. Gray, 126 S.W.2d 995, certified question answered 125 S.W.2d 284, 132 Tex. 509.—Venue 22(6).

Tex.Civ.App.—Eastland 1977. Since only relief licensor was entitled to under its pleadings against corporate licensee, which was properly suable in Bexar County, was money judgment for breach of contract and such judgment could be obtained in

Bexar County without presence of individual who guaranteed contracts entered into by corporate licensee, such individual was not suable in Bexar County as “necessary party” to licensor’s suit on license agreements. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Kids Kounty Klothng, Inc. v. Lachman-Rose Co., Inc., 546 S.W.2d 381.—Venue 22(4).

Tex.Civ.App.—Eastland 1965. “Necessary party” as used in statute providing that suit maintainable in given county against one defendant may be maintained in such county against any and all necessary parties is a party whose joinder is necessary to afford plaintiff full relief to which he is entitled in suit maintainable against another defendant in county in which suit is brought. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Holt v. City of Lubbock, 390 S.W.2d 500.—Venue 22(4).

Tex.Civ.App.—Eastland 1958. Where a defendant is suable in a county other than the county of his residence, and plaintiff joins another as a defendant, such other defendant is a “necessary party” within exception 29a to the venue statute, if the complete relief, to which plaintiff is entitled, as against defendant properly suable in that county, can be obtained only in a suit in which both defendants are parties. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—Coleman County Tel. Co-op., Inc. v. Cunningham, 318 S.W.2d 461, dismissed.—Venue 22(4).

Tex.Civ.App.—Eastland 1955. Under exceptions contained in venue statute where a suit is properly maintainable against one defendant in a county other than the county of his residence, and plaintiff therein joins another as a defendant and seeks to sustain venue as to him under subd. 29a, such other defendant is a “necessary party” if complete relief to which plaintiff is entitled under the facts as against defendant properly suable in that county can be obtained only in a suit to which both defendants are parties. Vernon’s Ann.Civ.St. art. 1995, subd. 29a.—York Supply Co. v. Dunigan Tool & Supply Co., 276 S.W.2d 317.—Venue 22(4).

Tex.Civ.App.—Eastland 1955. In suit in a note executed jointly by an individual and corporate defendant, corporate defendant was not a “necessary party” to the suit against the individual defendant within subdivision 29a so as to sustain venue in the county where note was payable, where corporate defendant was not a necessary party in strict sense in that under pleading and proof no judgment could be taken against individual defendant in absence of corporate defendant. Vernon’s Ann.Civ.St. art. 1995, subd. 29a; Rules of Civil Procedure, rules 31, 163.—York Supply Co. v. Dunigan Tool & Supply Co., 276 S.W.2d 317.—Venue 22(8).

Tex.Civ.App.—Eastland 1951. A defendant is a “necessary party” to suit brought in a county other than his residence within exception 29a to venue statute providing that a suit lawfully maintainable in a county under venue statute as to one of several defendants may be maintained in such county against all necessary parties, if the complete relief to which plaintiff is entitled as against defendant

properly suable in the county can be obtained only in a suit in which both defendants are parties. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Cockburn Oil Corp. v. Newman, 244 S.W.2d 845.—Venue 22(4).

Tex.Civ.App.—Eastland 1951. Even if individual defendant in whose name written contract for drilling an oil well was allegedly made for and on behalf of corporate defendant was suable on contract under exception five of venue statute in county in which sums payable under contract were payable, corporate defendant was not a "necessary party" to suit within exception 29a providing that a suit lawfully maintainable in county under venue statute as to one of several defendants may be maintained in the county against all necessary parties, since the only relief to which plaintiff was entitled as against individual defendant, being a money judgment against him, was obtainable in suit to which corporate defendant was not a party. Vernon's Ann.Civ. St. art. 1995, subds. 5, 29a.—Cockburn Oil Corp. v. Newman, 244 S.W.2d 845.—Venue 22(8).

Tex.Civ.App.—Eastland 1950. Where a suit is properly maintainable against one defendant in a county, and plaintiff seeks to sustain venue as to another defendant under statute providing that if suit is maintainable in county against one defendant it is maintainable in such county against all necessary parties, such other defendant is a "necessary party" if the complete relief can be obtained only in a suit to which both defendants are parties. Vernon's Ann.Civ.St. art. 1995, subds. 5, 29a.—Stephenville Production Credit Ass'n v. Drake, 226 S.W.2d 888.—Venue 22(4).

Tex.Civ.App.—Eastland 1944. Beneficiary of trust is not a "necessary party" to a suit by trustees to recover trust funds and hold them for beneficiary until such time as trustees, under provision of trust indenture, are authorized to deliver them to beneficiary.—Slay v. Mary Coutts Burnett Trust, 180 S.W.2d 480, affirmed in part, reversed in part 187 S.W.2d 377, 143 Tex. 621.—Trusts 257.

Tex.Civ.App.—Eastland 1944. The best evidence of whether a named defendant is a "necessary party" under exception to venue statute permitting any suit maintainable in a particular county as to any of several defendants to be maintained in that county against any and all necessary parties thereto is the plaintiff's petition. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Southwestern Peanut Growers Ass'n v. Womack, 179 S.W.2d 371.—Venue 22(4).

Tex.Civ.App.—Eastland 1944. Defendant who filed plea of privilege was not a "necessary party" to suit for foreclosure of chattel mortgage and landlord's lien on certain peanuts, within exception 29a to venue statute, where petition did not allege that such defendant had possession of any of peanuts or that such defendant was asserting any claim to peanuts. Vernon's Ann.Civ.St. art. 1995, subds. 5, 29a.—Southwestern Peanut Growers Ass'n v. Womack, 179 S.W.2d 371.—Plead 111.3.

Tex.Civ.App.—Eastland 1943. A "necessary party" to suit is one so vitally interested in object or subject matter thereof that valid judgment cannot

be rendered without his presence.—Rifkin v. Overbey, 171 S.W.2d 175, writ refused w.o.m.—Parties 29.

Tex.Civ.App.—Eastland 1942. Under exception 29a to the general venue statute, every party whose joinder in the suit is necessary to the securing of full relief in such suit is a "necessary party" within the exception. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—Ulmer v. Dunigan Tool & Supply Co., 163 S.W.2d 901.—Venue 22(4).

Tex.Civ.App.—Eastland 1942. In suit brought in Jones county by a school district thereof against driver and owners of a truck which collided with a school bus, who were all residents of Taylor county, where plaintiff sought to hold one owner of truck to a joint liability with the driver thereof, as to whom venue in Jones county was authorized under exception 9 of the venue statute, venue as to such joint owner was authorized under exception 29a on the ground that he was a "necessary party" to the suit, and on ground that plaintiff might secure full relief in such suit. Vernon's Ann.Civ.St. art. 1995, subds. 9, 29a.—Moreland v. Hawley Independent School Dist., 163 S.W.2d 892, opinion supplemented 169 S.W.2d 227.—Venue 22(6).

Tex.Civ.App.—Eastland 1942. In action to set aside county court's orders in guardianship proceeding, including order authorizing guardian to sell minor wards' interest in land, the guardian, who procured and executed such orders and whose accounting and discharge were questioned, was a "necessary party".—Fitzgerald v. Lane, 161 S.W.2d 523.—Guard & W 105(1).

Tex.Civ.App.—Eastland 1937. "Necessary party" to suit is person who is so vitally interested in subject-matter of litigation that valid decree cannot be rendered without his presence as party.—Johnson v. Ortiz Oil Co., 104 S.W.2d 543.—Parties 1.

Tex.Civ.App.—Eastland 1936. In suit on promissory note and to foreclose lien on maker's interest in decedent's estate securing note, administrator of such estate was not "necessary party," since property to be foreclosed was interest of maker personally and foreclosure did not interfere with administration of estate.—Ferguson v. Chapman, 94 S.W.2d 593, writ dismissed.—Ex & Ad 439.

Tex.Civ.App.—Eastland 1936. General highway contractor was not "necessary party" to motorist's action against independent contractor for damages sustained in collision with independent contractor's truck carrying asphalt for distribution on highway, and hence motorist could not sue general contractor outside county of contractor's domicile under exception in venue statute. Vernon's Ann.Civ.St. art. 1995, subd. 29a.—L. E. Whitham Const. Co. v. Wilkins, 90 S.W.2d 916.—Venue 22(6).

Tex.Civ.App.—Eastland 1935. In taxpayer's suit against commissioners' court to determine its authority to enter into contract with another to pay him out of general fund for preparing brief and presenting it to proper authorities for relief colony to be located in county, party with whom contract

was made held "necessary party."—*McCharen v. Bailey*, 87 S.W.2d 284.—*Counties 196*(6).

Tex.Civ.App.—Eastland 1927. Persons interested in object of suit should be parties, and every person to be directly affected by judgment is "necessary party."—*Hardin v. Hardin*, 1 S.W.2d 708.—*Parties 29*.

Tex.Civ.App.—Tyler 1978. A "necessary party" is one whose joinder is required in order to afford plaintiff the complete relief to which he is entitled against defendant who is properly suable in that county. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*Zodiac Corp. v. General Elec. Credit Corp.*, 566 S.W.2d 341.—*Parties 32*.

Tex.Civ.App.—Tyler 1973. Phrase "full relief," as used in cases defining a "necessary party" within meaning of venue statute section to be every party whose joinder in suit is necessary to afford plaintiff the full relief to which he is entitled, would not be construed to refer to total relief which might be pleaded through several causes of action in one petition, but would rather be construed to mean the "relief" referable to only one distinct cause of action. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*Mims v. East Texas Production Credit Ass'n*, 496 S.W.2d 682, dismissed.—*Venue 22*(4).

Tex.Civ.App.—Tyler 1970. Where collision insurer had no interest in recovery actually sought by its insured, \$100 which was unpaid by reason of deductible provision of insurance policy, and owned no part of damages sought by insured in their cross action against plaintiff, complete relief between parties to lawsuit could be and was had in cause of action actually alleged in cross action and disposed of by judgment; thus insurer, as subrogee of claim to extent that it paid damages for property damage to insured's automobile, was not "necessary party" and "indispensable party" to cross action to recover \$100 paid by insured under deductible provision of policy. *Rules of Civil Procedure, rule 39(a).*—*Campbell v. Jefferson*, 453 S.W.2d 336, writ dismissed.—*Parties 20*.

Tex.Civ.App.—Tyler 1969. Where relief sought by plaintiff against one of two codefendants was money judgment, relief could be had against such codefendant alone and second codefendant was not "necessary party" to suit. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*Smith Tank & Equipment Co. v. Shaffer Tool Works Co.*, 439 S.W.2d 679.—*Venue 22*(4).

Tex.Civ.App.—Corpus Christi 1981. Under venue statute providing that suit may be maintained against necessary parties in any county in which suit is lawfully maintainable against two or more defendants, "necessary party" is party whose joinder is necessary in order to afford plaintiff complete relief to which it is entitled under facts of suit in county in question. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*First City Nat. Bank of Houston v. Hardy*, 620 S.W.2d 732, dismissed.—*Venue 22*(4).

Tex.Civ.App.—Corpus Christi 1980. To be "necessary party" defendant's joinder in suit must be necessary in order to afford plaintiff complete relief

to which it is entitled against other defendants.—*Sabine Production Co. v. Frost Nat. Bank of San Antonio*, 596 S.W.2d 271, writ dismissed w.o.j.—*Parties 29*.

Tex.Civ.App.—Corpus Christi 1975. To be "necessary party" under venue statute, joinder of additional defendant in suit must be necessary to afford plaintiffs complete relief to which they are entitled under facts of case. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*First City Mortgage Co. v. Galling*, 530 S.W.2d 636, dismissed.—*Venue 22*(4).

Tex.Civ.App.—Corpus Christi 1967. A "necessary party" to a suit as used in subdivision of venue statute providing that whenever there are two or more defendants in any suit and such suit is lawfully maintainable as to any of such defendants in a particular county such suit may be maintained in such county against any and all necessary parties thereto, is one whose joinder is necessary to afford the plaintiff the full relief to which he is entitled. *Vernon's Ann.Civ.St. art. 1995, § 29a.*—*Dina Pak Corp. v. May Aluminum, Inc.*, 417 S.W.2d 419.—*Venue 22*(4).

Tex.Civ.App.—Hous. [14 Dist.] 1980. Within the meaning of venue statute providing that whenever there are two or more defendants and suit is lawfully maintainable against one of them in a particular county, "then such suit may be maintained in such county against any and all necessary parties thereto", a "necessary party" is one whose joinder is necessary to give plaintiff the complete relief to which he is entitled in the suit which can be maintained in that county. *Vernon's Ann.Civ.St. art. 1995, subd. 29a.*—*Seven Elves, Inc. v. Grant Plaza Huntsville Associates*, 598 S.W.2d 692, reversed *Friday v. Grant Plaza Huntsville Associates*, 610 S.W.2d 747.—*Venue 22*(4).

Tex.Civ.App.—Galveston 1948. Temporary administrator who had refused to bring an action to recover on a note payable to decedent in Lavaca County was a "necessary party," within meaning of exception 29a to the venue statute providing for venue in one county as to all necessary parties, to an action on such note by a devisee under decedent's will brought in Lavaca County under exception 5 authorizing action in a county in which a written contract is performable. *Vernon's Ann.Civ. St. art. 1995, subds. 5, 29a.*—*Dickson v. Klett*, 211 S.W.2d 381, mandamus overruled.—*Venue 22*(7.1).

Tex.Civ.App.—Galveston 1948. One to whom mortgagor or his assignee conveys interest in mortgaged properties, with notice to mortgage holder, before institution of suit to foreclose mortgage lien, is "necessary party" thereto within exception 29a of venue statute, authorizing maintenance of suit, brought against two or more defendants in county wherein it is lawfully maintainable as to any of them, against all necessary parties. *Vernon's Ann. Civ.St. art. 1995, subd. 29a.*—*Liegl v. Trinity Finance Corp.*, 211 S.W.2d 318.—*Venue 22*(6).

Tex.Civ.App.—Galveston 1942. Under civil procedure rule requiring joinder as plaintiff or defendant of persons having a joint interest, where power of attorney vested an interest in the cause of action

of plaintiff in trespass to try title action in plaintiff's attorney, attorney was a "necessary party" and hence trial court did not err in requiring his joinder as against contention that the attorney would be bound by the judgment because he had signed the petition. Rules of Civil Procedure, rule 39(a, b).—*Brown v. Meyers*, 163 S.W.2d 886, writ refused w.o.m.—*Tresp to T T 26*.

Tex.Civ.App.—Galveston 1942. A wife is not, and a husband is, a "necessary party" in a suit for community property.—*Texas Bldg. & Mortg. Co. v. Rosenbaum*, 159 S.W.2d 554, affirmed 167 S.W.2d 506, 140 Tex. 325.—*Hus & W 270(5)*.

Tex.Civ.App.—Galveston 1941. Where a will has been probated in a county court and a contest thereof by appeal carried to district court, the executor named in challenged will is the only "necessary party" to contest either in county or district courts. V.A.T.S. Probate Code, §§ 11, 15, 33, 145, 147.—*Cheesborough v. Corbett*, 155 S.W.2d 942, writ refused w.o.m.—*Wills 263, 361*.

Tex.Civ.App.—Galveston 1941. Where charter of city of Houston required city to bear expense of all primary elections held for purpose of nominating candidates of political parties for city offices, the city was a "necessary party" to suit for writ of mandamus to require holding of a new election for selection of chairman and members of the Democratic Executive Committee of the city under ballot prepared and printed in accordance with charter and ordinances of the city.—*Antoine v. Andrews*, 150 S.W.2d 293.—*Mand 151(2)*.

Tex.Civ.App.—Galveston 1940. Written guaranty to bank of repayment by partnership of \$10,000 loan and renewals thereof as general line of credit did not constitute guarantor a "necessary party" defendant within meaning of venue statute to bank's suit on notes subsequently executed by partnership and expressly made payable in Trinity county, so as to sustain venue in Trinity county in which guarantor did not reside as against guarantor's plea of privilege, since guarantor was not engaged in a joint enterprise with partnership nor interested in any real property involved in the litigation. *Vernon's Ann.Civ.St. art. 1995, subds. 23, 29a*.—*Smith v. First Nat. Bank in Groveton*, 146 S.W.2d 270.—*Venue 22(2)*.

Tex.Civ.App.—Galveston 1940. Where note and deed of trust securing it and covering lands in San Jacinto county were by their terms enforceable in Harris county and mortgagor's grantees, residents of Walker county, assumed payment of note and conveyed standing timber to purchaser residing in Walker county who recorded deed and removed timber, venue of suit against mortgagor's grantees and purchaser for foreclosure of trust deed and conversion of timber, was properly laid in Harris county as against purchaser of timber, since he was a "necessary party" within the venue statute. *Vernon's Ann.Civ.St. art. 1995, subd. 29a*.—*Boettcher v. Federal Land Bank of Houston*, 142 S.W.2d 272, writ dismissed.—*Venue 22(6)*.

Tex.Civ.App.—Galveston 1940. In taxpayers' suit to enjoin city officials from apportioning taxes other

than as set forth in ordinances, to recover damages, and to remove officials, city was a "necessary party," and taxpayers having themselves made city a party, trial court properly sustained a demurrer to petition in so far as it sought to enjoin officials from paying any expense or costs of case except as the court might order, since it is for city officials to determine whether, when the city is a party defendant to a suit, city will defend against it.—*Spears v. City of South Houston*, 137 S.W.2d 197, affirmed 150 S.W.2d 74, 136 Tex. 218.—*Mun Corp 1000(4), 1000(5)*.

Tex.Civ.App.—Galveston 1939. In suit to foreclose lien of a conditional sales contract payable in county where suit was brought, party who was in possession of machinery subject to the lien and who refused to surrender it to conditional vendor was a "necessary party" and was properly joined as a defendant, though he resided in another county. *Vernon's Ann.Civ.St. art. 1995, subd. 29a*.—*Beckham v. Pantex Pressing Mach.*, 135 S.W.2d 188.—*Venue 22(6)*.

Tex.Civ.App.—Galveston 1936. In suit to obtain personal judgment on notes and a foreclosure of deeds of trust securing notes, party claiming lien under another deed of trust on property involved held, though a "proper," not a "necessary party" to suit, regardless of whether its lien was superior, and hence, under statute, it was not suable in same county with makers of notes. *Vernon's Ann.Civ.St. art. 1995, subd. 29a*.—*West Texas Const. Co. v. Guaranty Bldg. & Loan Co.*, 93 S.W.2d 774.—*Venue 22(6)*.

Tex.Civ.App.—Galveston 1936. Defendant whose claimed lien against property was superior to that of plaintiff suing for a personal judgment on notes and a foreclosure of deed of trust on same property was not "necessary party" to suit, and hence, under statute, it was not suable in same county with makers of notes. *Vernon's Ann.Civ.St. arts. 1090, 1995, subd. 29a*.—*West Texas Const. Co. v. Guaranty Bldg. & Loan Co.*, 93 S.W.2d 774.—*Venue 22(6)*.

Tex.Civ.App.—Galveston 1936. Corporation's statutory lien against nonhomestead property for paving assessments held superior to that portion of lien of plaintiff, suing for personal judgment on notes and a foreclosure of deed of trust on same property, which was based on a vendor's mortgage lien, as respects whether corporation was, to such extent, a "necessary party" and hence, under statute, suable in same county with makers of notes. *Vernon's Ann.Civ.St. art. 1995, subd. 29a*.—*West Texas Const. Co. v. Guaranty Bldg. & Loan Co.*, 93 S.W.2d 774.—*Venue 22(8)*.

Tex.Civ.App.—Galveston 1936. Corporation's statutory lien against nonhomestead property for paving assessments held superior to that portion of lien of plaintiff suing for personal judgment and foreclosure of deed of trust on same property, which secured money advanced to pay taxes where taxes had been paid when money was advanced, as respects whether corporation was, to such extent, a "necessary party" to suit and hence, under statute,

suable in same county with makers of notes. Vernon's Ann.Civ.St. arts. 1090, 1995, subd. 29a.—West Texas Const. Co. v. Guaranty Bldg. & Loan Co., 93 S.W.2d 774.—Venue 22(8).

Tex.Civ.App.—Galveston 1935. In suit on contract for 15 per cent. interest in defendant's drilling company bonds, attorney whom defendant had separately contracted to pay 10 per cent. of bonds for legal services held not "necessary party."—Reymer-shoffer v. Ray, 85 S.W.2d 1102, writ refused.—Trover 29.

Tex.Civ.App.—Galveston 1935. Where subpurchasers who took subject to trust deed securing vendor's lien note, sued to cancel deeds to substitute trustee's grantee and subgrantee because of invalidity of trustee's sale, assignee of trust deed held not "necessary party"; only such trustee and the two grantees being "necessary parties."—Collier v. Ford, 81 S.W.2d 821, writ dismissed.—Can of Inst 35(3).

Utah 2001. A "necessary party" to an action, who must be joined if feasible, is one whose presence is required for a full and fair determination of his rights, as well as of the rights of other parties to the suit. Rules Civ.Proc., Rule 19(a).—Green v. Louder, 29 P.3d 638, 2001 UT 62.—Parties 18, 29.

Utah 1944. In equity, before adoption of Code, joinder was compulsory for all persons without whom a complete settlement of transaction could not be effected so that every one whose interests would be directly affected by decree or without whom court could not proceed became respectively a "necessary party" or "indispensable party" as distinguished from merely a "proper party."—Nunnally v. First Federal Building & Loan Ass'n of Ogden, 154 P.2d 620, 107 Utah 347, rehearing denied 159 P.2d 141, 107 Utah 379.—Equity 93.1.

Utah 1938. As regards whether maker was "necessary party" to action on note and for foreclosure of security pledged by maker and repledged by indorser, if judgment should be rendered against indorser and indorser should pay judgment, indorser could bring action for recoupment against maker who could first require the security to be returned on payment, and the security could not be returned if holder had foreclosed against indorser and sold the security. Rev.St.1933, 61-1-1 et seq.—Hoyt v. Upper Marion Ditch Co., 76 P.2d 234, 94 Utah 134.—Plgs 57.

Utah 1938. A maker of note which owned stocks it pledged as security to indorsers was "necessary party" to action to foreclose the pledge by holder, to whom indorsers repledged stocks and who knew that maker was owner of stocks. Rev.St. 1933, 61-1-1 et seq.—Hoyt v. Upper Marion Ditch Co., 76 P.2d 234, 94 Utah 134.—Plgs 57.

Utah 1935. Statute providing that state should be joined as necessary party in action for determination of water rights did not make state in its governmental capacity a "necessary party". Laws 1919, c. 67, § 38.—Plain City Irr. Co. v. Hooper Irr. Co., 51 P.2d 1069, 87 Utah 545.—Waters 152(5).

Utah App. 1999. Rule governing joinder of parties requires trial court to first determine whether a party is a "necessary party," or one whose presence is required for a full and fair determination of his rights as well as of the rights of the other parties to the suit. Rules Civ.Proc., Rule 19.—Johnson v. Higley, 989 P.2d 61, 1999 UT App 278, certiorari denied 994 P.2d 1271.—Parties 18, 29.

Va. 2000. Former wife was "necessary party" to former husband's action against landowners for specific performance of alleged oral agreement whereby landowners were required to convey land to former husband and former wife, and thus, former wife's absence precluded trial court from entering order requiring landowners to execute and deliver deed conveying property to former husband and former wife as tenants in common; it was not practically impossible to join former wife as party, and her interests were not separable from former husband's interests to extent that chancellor could enter order without prejudice to her rights.—Jett v. DeGaetani, 528 S.E.2d 116, 259 Va. 616.—Spec Perf 106(1).

Va. 1995. "Necessary party" is party who has interest in subject matter of litigation which is likely to be defeated or diminished by litigation.—Buxton v. Murch, 457 S.E.2d 81, 249 Va. 502.—Parties 18, 29.

Va. 1994. Joint obligee on contract is not "necessary party" to suit for breach of contract when joint obligee no longer has any right of action under contract.—Nash v. Blessing, 439 S.E.2d 393, 247 Va. 95.—Contracts 330(1).

Va. 1974. Grantor who had material interest in outcome of proceeding to set aside two deeds on ground that grantor was not mentally competent to execute deeds in that a decree rescinding deeds would deprive her of right to dispose of her property and would require her to return consideration received for property was a "necessary party" to proceeding so that her absence required reversal of judgment rendered in proceeding.—McDougle v. McDougle, 203 S.E.2d 131, 214 Va. 636.—Mental H 481.1.

Va. 1942. In general creditors' suit for sale of decedent's property to pay his debts, if administratrix' accounts were to be settled and realty resorted to for payment of unsecured claims, decedent's widow, who was also his administratrix, was a "necessary party" both in her own right and as administratrix.—Rector v. Tazewell Coal & Iron Co., 20 S.E.2d 504, 179 Va. 803.—Ex & Ad 356.

Va. 1941. Trustee, by whom deed was executed, is a "necessary party" to suit by beneficiary under trust deed to set aside trustee's deed at sale on foreclosure of trust deed.—Wills v. Chesapeake Western Ry. Co., 16 S.E.2d 649, 178 Va. 314.—Mtg 369(6).

Va. 1940. In suit for an accounting by and removal of testamentary trustee, the personal representative of a deceased trustee who allegedly participated in alleged breach of trust was not a

"necessary party."—*Rowland v. Kable*, 6 S.E.2d 633, 174 Va. 343.—Ex & Ad 439.

Va. 1939. A mortgagee is not a "necessary party" to condemnation proceeding since he is merely the "holder of a lien" and not the "holder of a legal title" to the land to be acquired. Code 1919, § 4360 et seq.—*Manufacturers Trust Co. v. Roanoke Water Works Co.*, 1 S.E.2d 318, 172 Va. 242.—Em Dom 177.

Va.App. 2001. A "necessary party" to an appeal is one whose interests are likely to be defeated or diminished by a successful appeal.—*Hughes v. York County Dept. of Social Services*, 548 S.E.2d 237, 36 Va.App. 22.—App & E 322, 327(2).

Wash. 1978. A "necessary party" is one who has sufficient interest in the litigation that the judgment cannot be determined without affecting that interest or leaving it unresolved. CR 19(a).—*Harvey v. Board of County Com'rs of San Juan County*, 584 P.2d 391, 90 Wash.2d 473.—Parties 18, 29.

Wash. 1943. The holder of legal title to realty under an undisclosed oral trust for vendor was, as to the purchaser, a "proper" but not a "necessary party" to vendor's action against purchaser to be adjudged the owner of the realty, to have title thereto quieted in vendor, to compel purchaser's removal from the realty, and to obtain the rental value of the realty during purchaser's possession. Rem.Rev.Stat. § 785.—*Stephens v. Kesselburg*, 143 P.2d 289, 19 Wash.2d 427.—Trusts 366(1).

Wash. 1943. If party to action, who was not given notice of appeal, could be affected by decision rendered in appeal, such party was a "necessary party" to appeal and must be served under statutory provision with notice thereof. Rem.Rev. Stat. § 1720.—*Brewster Co-op. Growers v. American Fruit Growers*, 141 P.2d 871, 19 Wash.2d 131.—App & E 327(2), 413.1.

Wash. 1943. The mere appointment of receiver for corporate defendant in pending suit does not bar or abate suit, and, corporation not being dissolved thereby, receiver is not "necessary party" to suit, though he may be "proper party", to be admitted on his own application to appear and defend, if interests represented by him renders it proper or necessary.—*Garrett v. Nespelem Consol. Mines*, 139 P.2d 273, 18 Wash.2d 340.—Abate & R 44; Corp 560(10).

Wash. 1943. A receiver of mining corporation's property was "proper party", though not "necessary party", to pending action against corporation to recover money due plaintiff for services rendered as caretaker of corporation's property, and court, in exercise of sound discretion, properly permitted receiver to appear as additional defendant and defend action after withdrawal of corporation's attorney.—*Garrett v. Nespelem Consol. Mines*, 139 P.2d 273, 18 Wash.2d 340.—Mines 106; Receivers 179.

Wash. 1941. Where one defendant, before commencement of action for establishment of boundary line between two tracts of land, had executed to two other defendants a real estate contract covering one

of the tracts and had assigned the contract and conveyed the property therein described to another person, and the instrument of assignment and conveyance was filed for record before commencement of action, that defendant was not a "necessary party".—*Cady v. Kerr*, 118 P.2d 182, 11 Wash.2d 1, 137 A.L.R. 713.—Bound 30.

Wash. 1941. Plaintiff who was a contract purchaser under a forfeitable real estate contract could not under statutes maintain an action for the establishment of a boundary line without joining as party plaintiff the owner of the tract occupied by him, and the owner of the adjoining tract occupied by defendants under a similar contract was a "necessary party" defendant. Rem.Rev.Stat. §§ 308—2, 947, 949.—*Cady v. Kerr*, 118 P.2d 182, 11 Wash.2d 1, 137 A.L.R. 713.—Bound 30.

Wash. 1941. Where purchaser had quitclaimed land to county and vendor sued the purchaser and county to recover the land, and vendor alleged that purchaser's deed to county was a cloud on the title and that execution of such deed was fraudulent, the purchaser was a "necessary party" to the action.—*Johnston v. Medina Imp. Club*, 116 P.2d 272, 10 Wash.2d 44.—Quiet T 30(3).

Wash.App. Div. 1 1998. Corporation that leased upper land was not "necessary party" to trespass action by lower landowner relating to clearing and drainage of wetland on upper land, where husband and wife owned the land, they were the sole shareholders and operators of the corporation, and they directed the clearing and drainage; rather, lower landowner could sue the shareholders, or the corporation, or both.—*Snohomish County v. Postema*, 978 P.2d 1101, 95 Wash.App. 817, review denied 994 P.2d 848, 139 Wash.2d 1011.—Waters 126(1).

Wash.App. Div. 1 1996. Party is "necessary party" if the party's absence would prevent trial court from affording complete relief to existing parties to the action or if party's absence would either impair that party's interest or subject any existing party to inconsistent or multiple liability. CR 19(a).—*National Homeowners Ass'n v. City of Seattle*, 919 P.2d 615, 82 Wash.App. 640.—Parties 18, 29.

Wash.App. Div. 1 1996. Company which purchased mobile home park with intention of closing park and opening new store on that site, and which prepared relocation plan for park, was a "necessary party" to action by homeowners' association for writ of review of city's decision approving relocation plan; as purchaser of the property and the project developer, company had invested considerable time and money in designing, planning, and obtaining permits for the project, and its absence would impair its ability to protect its interest. CR 19(a).—*National Homeowners Ass'n v. City of Seattle*, 919 P.2d 615, 82 Wash.App. 640.—Zoning 582.1.

Wash.App. Div. 1 1992. Party is "necessary party" if party's absence from proceedings would prevent trial court from affording complete relief to existing parties to action or would either impair that party's interest or subject any existing party to inconsistent or multiple liability. CR 19(a).—

Coastal Bldg. Corp. v. City of Seattle, 828 P.2d 7, 65 Wash.App. 1, review denied 838 P.2d 690, 119 Wash.2d 1024.—Parties 18, 29.

Wash.App. Div. 1 1992. A “necessary party” for purposes of declaratory judgment action is defined as one whose ability to protect its interest in subject matter of litigation would be impeded by judgment; such party must claim sufficient interest in litigation such that judgment cannot be determined without affecting that interest.—Primark, Inc. v. Burien Gardens Associates, 823 P.2d 1116, 63 Wash.App. 900.—Decl Judgm 293.1.

Wash.App. Div. 1 1991. Mortgagee is not “necessary party” to lien foreclosure action so that foreclosure action which omits mortgagee is void only as to mortgagee. West’s RCWA 60.04.100, 60.04.120, 60.04.200(4).—MB Const. Co. v. O’Brien Commerce Center Associates, 816 P.2d 1274, 63 Wash.App. 151.—Mech Liens 263(7).

Wash.App. Div. 1 1991. An owner is a “necessary party,” as opposed to a “proper party,” under statute permitting mechanics’ lienor to file foreclosure action just prior to expiration of eight-month statutory period and serve necessary parties within 90 days after filing. West’s RCWA 60.04.100.—Pacific Erectors, Inc. v. Gall Landau Young Const. Co., Inc., 813 P.2d 1243, 62 Wash.App. 158, reconsideration denied, review denied 827 P.2d 1011, 118 Wash.2d 1015.—Mech Liens 263(1).

Wash.App. Div. 1 1970. Assignee of real estate contract was not a “necessary party” in damage action brought against vendors by purchaser.—Rodin v. O’Beirn, 474 P.2d 903, 3 Wash.App. 327, review denied 78 Wash.2d 996.—Ven & Pur 327.

Wash.App. Div. 2 1997. “Necessary party” is one which has sufficient interest in litigation that the judgment cannot be determined without affecting that interest or leaving it unresolved. CR 19(a).—Kitsap County Fire Protection Dist. No. 7 v. Kitsap County Boundary Review Bd., 943 P.2d 380, 87 Wash.App. 753, review denied 958 P.2d 313, 134 Wash.2d 1027.—Parties 18, 29.

Wash.App. Div. 3 1993. “Necessary party,” within meaning of lien foreclosure statutes, is not defined by those statutes, but clearly includes property owner. West’s RCWA 60.04.060, 60.04.100 (1991).—Schumacher Painting Co. v. First Union Management, Inc., 850 P.2d 1361, 69 Wash.App. 693, review denied 863 P.2d 73, 122 Wash.2d 1013.—Mech Liens 263(1).

W.Va. 1995. “Necessary party” is one whose interest could be so impaired or adversely affected by outcome that he or she must be included as plaintiff or defendant unless there is valid excuse for their nonjoinder.—James M.B. v. Carolyn M., 456 S.E.2d 16, 193 W.Va. 289.—Parties 18, 29.

W.Va. 1947. In summary proceeding to locate true boundary lines between coterminous landowners, defendant’s wife whose only interest in defendant’s land was her inchoate right of dower therein, had no “present interest” in such boundary lines and was not a “necessary party” to proceedings.

Laws 1945, c. 1.—Sypolt v. Shaffer, 43 S.E.2d 235, 130 W.Va. 310.—Bound 30.

W.Va. 1944. In proceeding for appointment of substitute trustee under a trust deed, where movant appeared by recorded assignment to be person secured, fact that administrator of person who appeared by trust deed to be the party secured had executed release did not render administrator a “necessary party”. Code 1931, 44-14-1, 44-14-2.—Place v. Buckley, 30 S.E.2d 743, 126 W.Va. 926.—Mtg 342.

W.Va. 1943. The holder of a recorded lien is a “necessary party” to a judgment creditors’ suit. Code 1931, 38-3-9 to 38-3-15.—Early v. G. T. Fogle & Co., 24 S.E.2d 899, 125 W.Va. 466.—Debtor & C 11.

W.Va. 1942. Where under a trust agreement executed by bank in connection with reorganization plan, the bank retained a lien upon trust assets to secure bank’s contingent liability to nonassenting creditors and depositors, the bank was a “necessary party” to trustee’s action on a note allegedly surrendered by former trustee to an endorser without consideration and which action was brought for the purpose of winding up the trust.—Harshbarger v. Harrison, 22 S.E.2d 303, 124 W.Va. 688.—Trusts 257.

W.Va. 1940. Where a suit was brought by state to sell lands for benefit of school fund, and state’s title was derived from a tax sale made in name of a former owner in whose name land was returned delinquent for nonpayment of taxes, but after he had conveyed to a grantee, who in turn had conveyed to another, and both conveyances were of record at time of sale, the intermediate grantee was a “necessary party” to the suit. Code 1931, 37-3-10.—McCoach & Co. v. J. P. Hager & Co., 12 S.E.2d 529, 122 W.Va. 681.—Tax 679(5.1).

W.Va. 1940. The named beneficiary in a deed of trust of record at time of bringing suit by state to sell lands, the title to which was vested in it under a tax purchase, for benefit of school fund, was a “known interested party” under statute, and, therefore, a “necessary party”, although it might later be made to appear that his interest had become vested in a third party by an unrecorded transfer prior to such suit. Code 1931, 37-3-10.—McCoach & Co. v. J. P. Hager & Co., 12 S.E.2d 529, 122 W.Va. 681.—Tax 679(5.1).

W.Va. 1938. In contest between surviving parent and child’s grandfather over the custody of the child, the child’s guardian was not a “necessary party” or “proper party.” Code 1931, § 44-10-7.—Frame v. Wehn, 197 S.E. 524, 120 W.Va. 208.—Child C 409.

W.Va. 1938. In suit by assignee of notes to recover from one to whom mortgaged property had been granted, and who by the terms of the deed, in part consideration for the grant, assumed the debt represented by the notes, the grantor of the mortgaged property was a “necessary party,” since one coming into equity on doctrine of subrogation must bring before the court all persons whose rights are

involved or may be affected.—*Turner v. Rosenburger*, 196 S.E. 498, 120 W.Va. 41.—Equity 94.

W.Va. 1923. A person whose reputed equity in the land is indicated only by uncertain and indefinite evidence is not a “necessary party” to such suit.—*Canterberry v. Miller*, 120 S.E. 79, 95 W.Va. 1.

Wis. 1960. Where real estate was exclusively owned by University of Wisconsin Board of Regents and all interests in the real estate were subordinate to the board’s title, state had no interest per se in such real estate and therefore state was not a “necessary party” to taxpayer’s action to set aside board’s sale of the real estate. W.S.A. §§ 36.03, 36.34(1), 262.10.—*Glendale Development, Inc. v. Board of Regents of University of Wis.*, 106 N.W.2d 430, 12 Wis.2d 120, certiorari denied 81 S.Ct. 1652, 366 U.S. 931, 6 L.Ed.2d 389.—*Colleges 10; Parties 29.*

Wis. 1940. In employee’s action against employer and its insurer to set aside Industrial Commission’s order, the Industrial Commission is not a mere “nominal party” but is a “necessary party” as well as a “real party in interest.” St.1937, §§ 102.23(1), 102.25(1), 102.64(3) (W.S.A.)—*Rathjen v. Industrial Commission*, 289 N.W. 618, 233 Wis. 452.—*Work Comp 1867.*

Wis. 1939. The purchaser of corporate realty at a receiver’s sale was a “necessary party” to an appeal from order confirming sale, since purchaser would be inevitably interested in and affected by any reversal of order. St.1937, § 274.11.—*Haas v. Moloch Foundry & Mach. Co.*, 286 N.W. 62, 231 Wis. 529.—*App & E 327(7).*

Wis.App. 1987. Junior mortgagee was not “necessary party” to senior mortgagee’s foreclosure action, and, thus, failure to join junior mortgage did not void foreclosure proceedings, even if junior mortgagee had not previously assigned its rights.—*Wisconsin Finance Corp. v. Garlock*, 410 N.W.2d 649, 140 Wis.2d 506, review denied 416 N.W.2d 297, 141 Wis.2d 985.—*Mtg 427(1).*

Wyo. 1940. A person whose rights cannot be affected by judgment on appeal is not a “necessary party” to appeal in mortgage foreclosure proceedings.—*Turner v. Binninger*, 105 P.2d 574, 56 Wyo. 188.—*Mtg 573.*

NECESSARY PARTY COMPLAINANT

Ill. 1941. In statutory proceeding to compel delivery to executor of assets allegedly withheld from him, executor was not a “necessary party complainant”, but rather proceeding could have been started by creditor of decedent. S.H.A. ch. 3, §§ 83, 84.—*Keshner v. Keshner*, 33 N.E.2d 877, 376 Ill. 354.—*Ex & Ad 85(2).*

NECESSARY PARTY DEFENDANT

C.C.A.9 (Wash.) 1932. County treasurer, charged by law with duty of collecting personal property taxes, is “necessary party defendant” to action to restrain collection of such taxes. Laws Wash.1925, Ex.Sess., pp. 281, 282, §§ 83, 84 et seq.;

Rem.Comp.Stat.Wash. §§ 11318, 11321, 11328, 11329.—*Skagit County v. Northern Pac. Ry. Co.*, 61 F.2d 638, 86 A.L.R. 1012.—*Tax 611(4).*

N.D.Ill. 1941. The Deputy Commissioner who made a compensation order was a “necessary party defendant” to action under Longshoremen’s Compensation Act by employer and insurance carrier to have the order set aside. Longshoremen’s and Harbor Workers’ Compensation Act, § 21(b), 33 U.S.C.A. § 921(b).—*Nicholson Transit Co. v. Bassett*, 42 F.Supp. 990.—*Work Comp 1867.*

Cal.App.1 Dist. 1942. Where grantor acquired title to land before effective date of statute respecting interests in community property, grantor’s wife was not a “necessary party defendant” in remote grantee’s suit against grantor to quiet title to land, notwithstanding that wife was named as a grantor in deed to grantee’s predecessor. Civ.Code, § 161a.—*Spanfelner v. Meyer*, 124 P.2d 862, 51 Cal.App.2d 390.—*Hus & W 270(5).*

Cal.App.4 Dist. 1932. Question of whether third person was “necessary party defendant” held to depend on whether plaintiffs had cause of action against him.—*Gill v. Johnson*, 13 P.2d 857, 125 Cal.App. 296, hearing denied 14 P.2d 1017, 125 Cal.App. 296.—*Parties 29.*

Cal.App.4 Dist. 1932. Landowner fraudulently obtaining judgment canceling trust deed and ordering registration of land under Torrens Act held “necessary party defendant” in subpurchasers’ action against state treasurer to recover value of land from assurance fund. Civ.Code, § 1711; Code Civ.Proc. § 1963, subds. 2, 3; St.1915, p. 1949, § 105, subd. 2.—*Gill v. Johnson*, 13 P.2d 857, 125 Cal.App. 296, hearing denied 14 P.2d 1017, 125 Cal.App. 296.—*Parties 29.*

Ga. 1939. A defendant who is not served in trial court and who does not appear and plead or otherwise waive process is not a “necessary party defendant” to a bill of exceptions taken by plaintiff.—*Lefkoff v. Sicro*, 6 S.E.2d 687, 189 Ga. 554, 133 A.L.R. 738.—*App & E 327(6).*

Kan. 1935. The United States is not “necessary party defendant” in corporation’s action to enjoin internal revenue collector from enforcing lien for income taxes due from plaintiff’s president on oil leases whereon plaintiff drilled wells and District Court has jurisdiction to grant relief prayed, in absence of showing that president ever had individual interest, to which lien could attach, in such leases. 26 U.S.C.A. § 7207.—*Tootle-Lacy Bank of St. Joseph, Mo. v. Bank of Scandia, Scandia, Kan.*, 45 P.2d 593, 142 Kan. 50.

La.App.1 Cir. 1943. The sheriff was a “necessary party defendant” to action against register of state land office and holder of homestead certificates to annul a tax adjudication to state for non-payment of taxes and for preliminary injunction restraining register and holder of homestead certificates from proceeding further with homestead entry, and no effective legal process could issue except through sheriff. Act No. 73 of 1914, § 2, LSA-R.S.

47:2227.—Ott v. Grace, 13 So.2d 138.—Inj 114(3); Tax 806.

Mo. 1940. In action to quiet title and for injunctive relief by purchaser at foreclosure sale and holder of subsequently executed trust deed against city tax deed purchaser who purchased tax deed through former owner's agent who had full knowledge of rights of purchaser at foreclosure, where only deed in evidence was tax deed executed by city treasurer to purchaser, which deed recited that certificate of purchase was assigned to purchaser, city was not a "necessary party defendant", since the certificate of purchase referred to as issued to the city and assigned to the purchaser did not operate on title. Mo.St.Ann. § 6215, p. 5332, V.A.M.S. § 93.205.—Robinson v. Burton, 139 S.W.2d 942.—Mun Corp 982.

Neb. 1941. A conveyance of land to grantor's wife by deed not recorded until after execution and recording of spouses' subsequent mortgages thereon was absolutely void as to mortgagee, so that wife's daughter was not "necessary party defendant" in action to foreclose mortgage, brought after wife's death by mortgagee corporation. Comp.St. 1929, § 76-218.—Clements v. Doak, 299 N.W. 505, 140 Neb. 265.—Quiet T 30(3).

N.J.Ch. 1943. In suit against executors of an estate and presumptive remainderman for a decree holding, among other things, that complainant occupied the status of an adopted child of testator, testator's widow, against whom individually no relief was sought and who was an individual participant in the residuary estate, was not a "necessary party defendant".—Hendershot v. Hendershot, 33 A.2d 573, 133 N.J.Eq. 544.—Ex & Ad 438(5).

N.Y.Sup. 1942. A purchaser under a contract of sale with a mortgagor is generally considered to be a "necessary party defendant" in mortgage foreclosure action.—Condon v. Murphy, 34 N.Y.S.2d 390.—Mtg 434.

N.Y.Sup. 1942. Instrument entered into by mortgagors and prospective purchaser of mortgaged realty, though considered only as an option creating no rights assertable by mortgagors, created optional rights in favor of the prospective purchaser requiring the prospective purchaser's joinder as a "necessary party defendant" to foreclosure action filed after execution of the instrument.—Condon v. Murphy, 34 N.Y.S.2d 390.—Mtg 435.

S.D. 1939. If mortgagor remains owner of equity of redemption, he is a "necessary party defendant" to an action to foreclose mortgage.—Federal Land Bank of Omaha v. Fjerestad, 285 N.W. 298, 66 S.D. 429, 124 A.L.R. 780.—Mtg 427(1).

S.D. 1939. A deceased mortgagor's personal representative having only a temporary right of possession and no title to property, though a "proper party," is not a "necessary party defendant" to a mortgage foreclosure action unless a deficiency judgment is sought. Rev.Code 1919, §§ 700, 3301, 3302.—Federal Land Bank of Omaha v. Fjerestad, 285 N.W. 298, 66 S.D. 429, 124 A.L.R. 780.—Mtg 427(1).

Tex. 1940. An officer of the bank was not a "necessary party defendant" to a suit in the nature of a bill of discovery to compel a joint stock land bank to answer interrogatories as to names of its stockholders and amount of stock held by each stockholder. Rev.St.1925, art. 2002; 12 U.S.C.A. §§ 548, 932.—Dallas Joint Stock Land Bank of Dallas v. State ex rel. Cobb, 137 S.W.2d 993, 135 Tex. 25.—Pretrial Proc 246.

Tex.Civ.App.—Fort Worth 1940. In action brought in Montague county against a resident of Montague county, and a corporation domiciled in Tarrant county for damages for breach of contract to furnish seed where plaintiff alleged that resident was agent of corporation and that corporation, a seed company, was a party to sale of seed and sought recovery against resident and corporation jointly and severally, and there was evidence that plaintiff purchased seed through resident, corporation was a "necessary party defendant" and venue could be maintained in Montague county. Vernon's Ann.Civ.St. art. 1995, subd. 29a; art. 207.—American Seed Co. v. Wilson, 140 S.W.2d 269.—Venue 22(8).

W.Va. 1943. Where constructive trust was created by owner of lot fraudulently permitting another mistakenly to erect a building thereon, and furnisher of materials used in erecting the building, as creditor of the builder, sought to enforce the trust, the builder was a "necessary party defendant".—Logan Planing Mill Co. v. Pope, 27 S.E.2d 852, 126 W.Va. 321.—Trusts 366(3).

NECESSARY PARTY PLAINTIFF

W.D.Mo. 1928. The federal district court in state of which defendant was a resident had jurisdiction of suit to foreclose trust deed by nonresident assignee of note secured thereby, notwithstanding that trustee who was joined as codefendant on refusal to commence suit was resident of same state with defendant where trustee refused to bring suit on ground that he had no right to commence foreclosure action, but had power to sell property under power of sale, since trustee was not "necessary party plaintiff" under such circumstances, although properly made a defendant. Jud. Code Sec. 24(1), as amended, 28 U.S.C.A. 41(1).—Union Assur. Soc., Ltd., of London, England v. Miller, 29 F.Supp. 127.—Fed Cts 289.

S.D.N.Y. 1943. Licensee was not a "necessary party plaintiff" in patent infringement action, where it appeared that licensee prior to institution of the suit had terminated its exclusive license pursuant to agreement with patentee, reserving only a nonexclusive license.—Katz v. Horni Signal Mfg Corporation, 52 F.Supp. 453, reversed 145 F.2d 961, certiorari denied 65 S.Ct. 1029, 324 U.S. 882, 89 L.Ed. 1432.—Pat 290(1).

W.D.Wis. 1942. The United States was a proper and "necessary party plaintiff" and authorized to institute and maintain an action to compel creamery's compliance with orders of Secretary of Agriculture regulating the handling of milk under the

Agriculture Adjustment Act as amended by the Agricultural Agreement Act of 1937. Agricultural Marketing Agreement Act of 1937, § 1 et seq., 7 U.S.C.A. § 601 et seq.—*U.S. v. Ridgeland Creamery Co.*, 47 F.Supp. 145.—Food 4.5(6).

Colo. 1942. In action by the state compensation insurance fund against street car motorman and street car company to recover for injuries sustained by police officer when ambulance collided with street car, and for which the officer had received compensation from the state compensation insurance fund, officer was a "proper party plaintiff" although not a "necessary party plaintiff". '35 C.S.A. c. 97, § 366; Code, § 10.—*Wilson v. Smith*, 130 P.2d 1053, 110 Colo. 68.—Work Comp 2223.

La.App. 1 Cir. 1943. One who was the tax and judgment debtor and owner of realty when it was adjudicated to the state for nonpayment of taxes was a "necessary party plaintiff" in action by judgment creditor against register of state land office and holder of homestead certificate to annul tax adjudication to state and for "writ of preliminary injunction" restraining register and holder of homestead certificate from proceeding further with homestead entry, since judgment could not be pleaded as "res judicata" in action by the tax and judgment debtor, and since, a "multiplicity of suits" would be avoided. Act No. 73 of 1914, § 2.—*Ott v. Grace*, 13 So.2d 138.—Inj 114(2); Tax 806.

N.Y.Co.Ct. 1943. In action by insured to recover from garage for negligence in theft of automobile where under subrogation agreement, upon payment of claim for repairs to automobile to insured, insurer was entitled to release of liability under theft policy to extent of payment made, and insured assigned his cause of action to insurer without condition, insurer was a "necessary party plaintiff". Civil Practice Act, § 210.—*Arnold v. Kensington Plaza Garages*, 42 N.Y.S.2d 118, 179 Misc. 697.—Insurance 3526(5).

Tex.Civ.App.—Eastland 1941. When a feme sole institutes a suit and subsequently marries before the case is tried, the suit will not abate under statute, but husband is a "necessary party plaintiff", in absence of allegations and proof that husband declined to join wife in the action. *Vernon's Ann. Civ.St. arts. 1983, 2084*.—*Woodmen of World Life Ins. Soc. v. Smauley*, 153 S.W.2d 608.—Hus & W 221.

Tex.Civ.App.—Eastland 1941. Where beneficiary instituted action on double indemnity benefit certificate when she was a feme sole, but subsequently married before case was tried, beneficiary's husband was a "necessary party plaintiff" in absence of allegations and proof that he declined to join her in the suit as provided by statute, and it was not sufficient to merely make him a party plaintiff pro forma and not dispose of him in the judgment. *Vernon's Ann.Civ.St. arts. 1983, 2084*.—*Woodmen of World Life Ins. Soc. v. Smauley*, 153 S.W.2d 608.—Hus & W 221.

W.Va. 1941. Where there was named in an automobile policy with a collision clause, an individual as "purchaser assured" and also a named credit

company as an assured, the credit company was a "necessary party plaintiff" to action on the policy, and the action could not be maintained by the individual alone.—*Vinson v. Home Ins. Co.*, 16 S.E.2d 924, 123 W.Va. 522.—Insurance 3567.

NECESSARY PARTY TO THE ISSUE OR RECORD

Ind. 1943. In proceeding by the state on the relation of superintendent of state hospital for the insane against administrator of an insane person to recover for his maintenance in the state hospital, superintendent was not a "necessary party to the issue or record" within statute prohibiting such party from testifying where heirs or administrators are parties. *Burns' Ann.St. § 2-1715*.—*State ex rel. Milligan v. Ritter's Estate*, 48 N.E.2d 993, 221 Ind. 456.—Witn 139(2).

NECESSARY PERMANENT IMPROVEMENTS

Ala. 1940. A mortgagor seeking to redeem from mortgage foreclosure must pay for "necessary permanent improvements" made by purchaser, which include not only ordinary repairs but also valuable and useful additions and improvements suited to reasonable necessities, character and use of property. Code 1923, §§ 9011, 9012, 9016, 9018, 10153.—*Rodgers v. Dixon*, 193 So. 741, 239 Ala. 72.—Mtg 603.

NECESSARY PERSON

Mo.App. W.D. 2002. A "necessary person" for joinder purposes is one who is so vitally interested in the subject matter that a valid judgment cannot be effectively rendered without their presence. V.A.M.R. 52.04.—*Williams Pipeline Co. v. Allison & Alexander, Inc.*, 80 S.W.3d 829.—Parties 18, 29.

Mo.App. W.D. 2000. "Necessary person" required to be joined in an action is one who claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may, as a practical matter, impair or impede the person's ability to protect that interest. V.A.M.R. 52.04(a)(2)(i).—*Missouri Nat. Educ. Ass'n v. Missouri State Bd. of Educ.*, 34 S.W.3d 266.—Parties 18, 29.

Mo.App. W.D. 2000. "Necessary person" required to be joined in an action is one who is so vitally interested in the subject matter of controversy that a valid judgment cannot be effectively rendered without the party's presence. V.A.M.R. 52.04(a)(2)(i).—*Missouri Nat. Educ. Ass'n v. Missouri State Bd. of Educ.*, 34 S.W.3d 266.—Parties 18, 29.

NECESSARY PLAINTIFF

C.C.A.5 (Miss.) 1941. In suit by state of Mississippi for benefit of administrator of deceased's estate on official bond of superintendent of state penitentiary on theory that superintendent breached bond by allowing a convict to go at large as a "trustee" and was liable for death of deceased who was murdered by the convict, the state was a "necessary plaintiff" but as the state had no interest at

stake, it was a “nominal party” not to be considered on question of diversity of citizenship in determining federal court’s jurisdiction. Code Miss.1930, § 2889.—*Thames v. State of Mississippi*, for Use and Benefit of Shoemaker, 117 F.2d 949, 136 A.L.R. 926, certiorari denied 62 S.Ct. 63, 314 U.S. 630, 86 L.Ed. 506.—Fed Cts 289.

NECESSARY PLANTATION ROADS

Miss. 1908. The term “necessary plantation roads,” as used in Code 1906, § 4058, requiring their construction and maintenance by railroads, means roads necessary to the plantation to which they are annexed, and, while an occasional and isolated use of the crossing by others would not relieve the company from liability to maintain it, the company is not bound to maintain the crossing in good condition and make repairs, necessitate by constant heavy driving, done by others than the owner with his consent.—*Illinois Cent. R. Co. v. McGowan*, 46 So. 55, 92 Miss. 603.—R R 109.

NECESSARY POSTSECONDARY EDUCATION EXPENSES

Iowa App. 2002. Term “necessary postsecondary education expenses,” as used in statute providing for postsecondary education subsidy for child of divorced parents, means tuition, room, board, and books, including mandatory fee assessments for such things as laboratory, student health, and computer use. I.C.A. § 598.21, subd. 5A, par. a(1).—*In re Marriage of Dolter*, 644 N.W.2d 370.—Child S 119.

NECESSARY POWER

C.C.A.2 (N.Y.) 1939. The selection of a safe depository for its funds is a “necessary power” of a government.—*Berger v. Chase Nat. Bank of City of New York*, 105 F.2d 1001, affirmed 60 S.Ct. 707, 309 U.S. 632, 84 L.Ed. 990, rehearing denied 60 S.Ct. 885, 309 U.S. 698, 84 L.Ed. 1037, affirmed *Schram v. Chase Nat Bank of City of New York*, 60 S.Ct. 707, 309 U.S. 632, 84 L.Ed. 990, rehearing denied 60 S.Ct. 885, 309 U.S. 698, 84 L.Ed. 1037, affirmed *Young*—Dep & Escr 31.

NECESSARY PREDICATE DOCTRINE

E.D.Mich. 2002. “Necessary predicate doctrine,” which requires alleged antitrust violation to be necessary predicate to antitrust injury, did not bar medical distributor’s action against competitors for alleged exclusive agreement that terminated distributor’s contract to sell drug injection caps; distributor sufficiently alleged that it would not have been eliminated as a distributor absent competitors’ conspiracy to set the price level for injection caps at or above the level distributor was willing to sell, and thereby eliminate future threats of increased price competition. *Sherman Act*, § 1, as amended, 15 U.S.C.A. § 1.—*First Med Representatives, LLC v. Futura Medical Corp.*, 195 F.Supp.2d 917.—Monop 28(1.4).

NECESSARY PRELIMINARY

Conn. 1958. The inclusion of the word “process” in Sales and Use Tax Act provision granting exemption to sales of and use of materials etc., “consumed and used directly * * * in an industrial plant in the process of the manufacture of tangible personal property to be sold” indicates legislative intention to include any use made of property as a “necessary preliminary” to delivery of finished product. Gen.St.1949, § 2096(r).—*United Aircraft Corp. v. Connelly*, 140 A.2d 486, 145 Conn. 176.—Tax 1245.

NECESSARY PROCESS

Mo.App. 1973. Service by publication on non-resident husbands, whose wives had been permitted to proceed as “poor persons” in divorce proceedings, was a “necessary process” within meaning of statute, which provides indigents with access to courts even though unable to pay costs of litigation; thus, order of publication was required to be issued without cost to wives. Sections 493.010, 506.160, 514.040 RSMo 1969, V.A.M.S.; V.A.M.S.Const. art. 1, § 14.—*State ex rel. Taylor v. Clymer*, 503 S.W.2d 53.—Divorce 190.

Vt. 1995. “Necessary process” used by judge at general inquest to require witnesses to give evidence related to investigation includes issuing subpoenas and exercising contempt power. 13 V.S.A. § 5131.—*In re D.L.*, 669 A.2d 1172, 164 Vt. 223.—Crim Law 212.

NECESSARY PUBLIC BUILDING

N.M. 1948. A county hospital building is a “necessary public building” within constitutional provision that no county shall borrow money except for purpose of erecting “necessary public buildings” or constructing or repairing public roads and bridges. Const. art. 9, § 10.—*Board of County Com’rs of Bernalillo County v. McCulloh*, 195 P.2d 1005, 52 N.M. 210.—Counties 153.

N.M. 1940. Juvenile delinquent home authorized by statute in first-class counties is a “necessary public building” within constitutional provision prohibiting borrowing by counties except for erecting necessary public buildings, the word “necessary” not being used as meaning indispensable but rather as being synonymous with “needful.” *Laws 1939*, c. 75, § 1; Const. art. 9, § 10.—*Hutcheson v. Ather-ton*, 99 P.2d 462, 44 N.M. 144.—Counties 153.

Tex.Civ.App.—*Texarkana* 1931. Building used as public restroom and toilet was “necessary public building” within provision of deed dedicating lots as place for erecting “public building which may be necessary” for county.—*Pitts v. Camp County*, 42 S.W.2d 853, writ refused.—Deeds 162.

NECESSARY PUBLIC BUILDINGS

Ala. 1936. School bonds for public school buildings held issued for “necessary public buildings” within constitutional provision relating to taxation for necessary public county buildings. Const.1901, § 215.—*Doody v. State ex rel. Mobile County*, 171 So. 504, 233 Ala. 287.—Counties 192.

Mich.App. 1974. In view of state constitutional provision requiring sheriff, county clerk, county treasurer and register of deeds to hold their principal offices at county seat, only those buildings necessary to house those constitutionally specified offices were to be deemed "necessary public buildings" within statute requiring county to provide at county seat a suitable courthouse, suitable and sufficient jail and fireproof offices and "all other necessary public buildings." M.C.L.A.Const.1963, art. 7, § 5; M.C.L.A. § 45.16.—Kyes v. Allegan County Bd. of Com'rs, 221 N.W.2d 449, 54 Mich. App. 741.—Counties 37.

N.M. 1948. A county hospital building is a "necessary public building" within constitutional provision that no county shall borrow money except for purpose of erecting "necessary public buildings" or constructing or repairing public roads and bridges. Const. art. 9, § 10.—Board of County Com'rs of Bernalillo County v. McCulloh, 195 P.2d 1005, 52 N.M. 210.—Counties 153.

N.M. 1948. Act authorizing issuance of county bonds to construct, purchase, own, maintain and operate hospitals, including isolation wards, and to purchase necessary lands therefor, insofar as to the purchase and installation of necessary equipment for said hospital is concerned, does not violate constitutional provision that no county shall borrow money except for purpose of erecting "necessary public buildings" or constructing or repairing public roads and bridges. Laws 1947, c. 148; Const. art. 9, § 10.—Board of County Com'rs of Bernalillo County v. McCulloh, 195 P.2d 1005, 52 N.M. 210.—Counties 153.

NECESSARY PUBLIC EXPENSE

N.C. 1926. Erection of schoolhouses in school district to provide free education for all children of school age is a "necessary public expense," under Const. art. 9.—Tate v. Board of Educ. of McDowell County, 135 S.E. 336, 192 N.C. 516.

NECESSARY PUBLIC SERVICES

Ariz.App. Div. 2 2000. Capital financing costs for schools were not "costs to the municipality" associated with providing "necessary public services" to development, as purported statutory basis for general law city to voluntarily finance capital costs for additional schools through a development fee on residential development, because city lacked any constitutional or statutory authority over, or responsibility for, public school matters. A.R.S. § 9-463.05, subd. A.—Home Builders Ass'n of Central Arizona v. City of Apache Junction, 11 P.3d 1032, 198 Ariz. 493, review denied.—Zoning 382.4.

NECESSARY PURPOSE

N.C. 1939. The proposal of a municipality to issue bonds under the Municipal Finance Act of 1917 to procure funds to build and equip a municipal auditorium and municipal buildings for recreation and athletic purposes and to acquired lands for public parks and playgrounds which had been approved by majority of the voters voting but not by a majority of the qualified voters was enjoined

under the Constitution at suit of taxpayer, on the ground that it was not for a "necessary purpose." Code 1935, §§ 2936 et seq., 2948; Const. art. 5, § 4; art. 7, § 7.—Twining v. City of Wilmington, 200 S.E. 416, 214 N.C. 655.—Mun Corp 993(3).

N.C. 1903. Furnishing light and water for public purposes is a "necessary purpose," and the cost thereof is a "necessary expense" of municipalities furnishing the same.—Wadsworth v. City of Concord, 45 S.E. 948, 133 N.C. 587.

Wash. 1940. An expenditure by county which had exceeded its constitutional and statutory debt limit, to furnish quarters for welfare department, was for a "necessary purpose," so that it could be funded under the county budget law, where it was made after effective date of act dealing with social security and with the division of public assistance. Rem.Rev.Stat. §§ 3997-1 to 3997-10, 5605; Const. art. 8, § 6; Laws 1937, p. 697.—Raynor v. King County, 97 P.2d 696, 2 Wash.2d 199.—Counties 150(2).

NECESSARY PURPOSES

Cal. 1875. "Necessary purposes," as used in West's Ann.Code Civ.Proc. § 1415, providing that a special administrator may for certain enumerated purposes, and for all "necessary purposes," maintain actions and other legal proceedings as an administrator, means purposes having in view the enforcement of the substantial rights of parties entitled to the benefits of the estate, or to have its assets applied to the satisfaction of their established claims.—Forde v. Exempt Fire Co., 50 Cal. 299.

NECESSARY REPAIRS

Kan. 1915. "Necessary repairs" are used in Laws 1891, c. 204, § 15, relating to drains, in the sense in which they are ordinarily understood.—Shoner v. Frisbie, 146 P. 419, 94 Kan. 220.—Drains 52.

La.App. 2 Cir. 1955. Where repairs of electric wiring by lessees in building on leased premises were repairs indispensable for granting of city permit for electric service in building to be used as garage where trucks and automobiles were to be repaired and serviced, and repairs merely fulfilled minimum requirements for permit, repairs were "necessary repairs" within meaning of statute providing that if lessor refuses or neglects to make "necessary repairs", lessee may himself cause them to be made and deduct price from rent due. LSA-C.C. art. 2694.—Barrow v. Culver Bros. Garage, 78 So.2d 69.—Land & Ten 152(10).

La.App. 2 Cir. 1955. In action by lessor against lessees to recover amount of rent which lessees had withheld for making repairs in electric wiring in building on leased premises, wherein lessees set up defense that repairs were "necessary repairs" within meaning of statute and were required to be made at beginning of term of lease so that building could be used as garage for repair and servicing of automobiles and trucks, defense of lessees was set forth with sufficient certainty. LSA-C.C. arts. 2693,

2694.—*Barrow v. Culver Bros. Garage*, 78 So.2d 69.—Plead 18.

N.Y.A.D. 2 Dept. 1906. A covenant by a tenant to make “necessary repairs” means only such repairs as the tenant finds necessary for his use of the premises, and does not require him to put the premises in better condition than they were at the beginning of the tenancy.—*Tinsley v. Smith*, 101 N.Y.S. 382, 115 A.D. 708, affirmed 88 N.E. 1133, 194 N.Y. 581.

N.Y.A.D. 4 Dept. 1921. Covenants in the lease of a garbage plant to make “all necessary repairs and replacements” and “to keep the plant * * * in as good condition as at present” should be construed together, and, when so construed, “necessary repairs” mean such ordinary repairs as are necessary for the tenant to make to carry on the business contemplated, while the required “replacements” contemplate replacing destroyed portions or parts.—*Marcy v. City of Syracuse*, 192 N.Y.S. 674, 199 A.D. 246.—*Land & Ten* 152(4).

Or. 1915. Laws 1913, p. 169, § 2, declares that no person shall be employed in any mill, factory, or manufacturing establishment more than ten hours in any one day, except watchmen and employees engaged in making necessary repairs, provided that employees may work overtime, not to exceed three hours, upon payment therefor. Held that, as the proviso does not enlarge the exception, the prohibition does not apply to a servant in a sawmill engaged in making ordinary repairs necessary to the conduct of the business, though they were not unusual, and would in any case have to be made sooner or later, for the term “necessary repairs” should be construed as convenient or needful repairs; it not being the purpose of the Legislature to discourage the immediate repairing of machinery.—*State v. Young*, 145 P. 647, 74 Or. 399.

Wis. 1899. The words “necessary repairs,” in an order enjoining county officers from doing road work or spending money under a certain resolution, and from expending money after an annual levy was exhausted, excepting for the making of necessary repairs to roads, legally designated for expenditure of money in their repair, means emergency repairs or such repairs on roads as were necessary to make travel safe, so that the duty of the county to travelers upon its highways might still be discharged.—*Webster v. Douglas County*, 77 N.W. 885, 102 Wis. 181, 72 Am.St.Rep. 870, motion granted 78 N.W. 451, 102 Wis. 181, 72 Am.St.Rep. 870.

NECESSARY REPAIRS OR INCIDENTAL EXPENSES

Pa. 1918. Under Third Class City Act, Act June 27, 1913, P.L. 568, 578, art. 4, § 5, providing that all work and materials required by city shall be furnished, and that the printing, advertising, and other work, except ordinary repairs, shall be performed under contract given to the lowest bidder, and that the council may by ordinance provide a contingent fund for necessary repairs or incidental expenses, which may be expended without advertising for bids, contracts for improvements to a city hall,

amounting to a permanent alteration and remodeling, including new heating, lighting, and pumping systems, new partitions, stairways, windows, entrances, etc., must be let as provided by the act, and cannot be paid out of the contingent fund without competitive bidding, as such claims could not be included under the term “necessary repairs or incidental expenses”; and while some of the work might be classed as ordinary repairs, it was so blended with the other work that it could not be the basis of a separate claim.—*Dolan v. Schoen*, 104 A. 149, 261 Pa. 11.

NECESSARY REPLACEMENTS

M.D.Pa. 1986. Leaking roofs and inadequate sewage capacity in shopping malls were “necessary replacements” which co-owner’s subsidiaries were required to make pursuant to lease executed by real estate investment trust and subsidiaries.—*First Union Real Estate Equity and Mortg. Investments v. Crown American Corp.*, 639 F.Supp. 838.—*Land & Ten* 157(1).

NECESSARY RESPONSE COSTS

C.A.10 (Utah) 1993. Plaintiffs could not recover attorney fees arising from litigation of private recovery action under Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA); CERCLA does not explicitly authorize award of litigation fees, and litigation fees are not “necessary response costs,” for purposes of CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 101–308, 42 U.S.C.A. §§ 9601–9657.—*FMC Corp. v. Aero Industries, Inc.*, 998 F.2d 842.—*Environ Law* 720(2).

NECESSARY RESULT

Mo.App. 1937. In action against store owner for injuries received by customer when she fell on slippery floor of store, wherein customer alleged generally injury to her head, neck, and back, owner held entitled to continuance to enable it to meet new issue after petition was amended to allege aggravation of pre-existing arthritic condition, since such aggravation of pre-existing condition was not “necessary result,” although a “natural result,” of injury, and hence amendment broadened issues.—*Simon v. S. S. Kresge Co.*, 103 S.W.2d 523.—*Pretrial Proc* 720.

NECESSARY REVENUE

Neb. 1979. Levying of taxes for accumulation of fund was within constitutional provision that “necessary revenue” of state and its governmental subdivisions be raised by taxation in such manner as legislature might direct. R.R.S.1943, § 79–548.01; Const. art. 8, § 1.—*Banks v. Board of Ed. of Chase County High School Dist. No. 15*, 277 N.W.2d 76, 202 Neb. 717.—*Tax* 38.

NECESSARY RISK

N.Y.A.D. 2 Dept. 1909. Laws 1902, p. 1750, c. 600, § 3, providing that an employé, by entering on or continuing in the employer’s service, shall be

presumed to have assented to the necessary risks of the employment, such risks including those inherent in the nature of the business, after the employer has exercised due care for the safety of employes, and complied with laws regulating such business, distinguishes between "necessary risk" and "obvious risk," which latter may be due to the master's failure to perform his duty.—*Hurley v. Olcott*, 119 N.Y.S. 430, 134 A.D. 631, leave to appeal denied 119 N.Y.S. 1129, 136 A.D. 888, affirmed 91 N.E. 270, 198 N.Y. 132.—*Emp Liab* 121.

N.Y.A.D. 3 Dept. 1905. The risk of injury to a servant who, at the suggestion of his foreman, thrust his hand into a wooden box, in which a screw with sharp blades was rapidly revolving, in order to loosen cement in a chute leading into the box, knowing the cement was liable to fall in such quantities as to drive his arm against the screw, was not a "necessary risk" of the business, which are the only risks that an employee is conclusively presumed not to assume, as provided by Employers' Liability Act, Laws 1902, p. 1750, c. 600, § 3.—*Vaughn v. Glens Falls Portland Cement Co.*, 93 N.Y.S. 979, 105 A.D. 136.

NECESSARY RISKS

Ga.App. 1921. Risks which a servant assumes are "necessary risks," such as attach or belong to the work, and which ordinary care of the master cannot provide against.—*Neary v. Georgia Public Service Co.*, 107 S.E. 893, 27 Ga.App. 238.

N.Y.A.D. 2 Dept. 1908. The New York statute defining "necessary risks" as those "inherent in the nature of the business, which remain after the employer has exercised due care in providing for the safety of his employes," is but declaratory of the common law.—*Logerto v. Central Bldg. Co.*, 108 N.Y.S. 604, 123 A.D. 840.

NECESSARY SANITATION

Ga. 1921. Acts 1909, p. 131, as amended by Acts 1918, p. 256, authorizing the use of county funds to aid in the work of eradication of cattle ticks and the suppression of contagious and infectious diseases of live stock, does not violate Const. art. 7, § 6, par. 2, prohibiting the levying of taxes by counties except for the purposes therein specified, including "necessary sanitation."—*Avera v. Clyatt*, 109 S.E. 655, 152 Ga. 280.—*Counties* 192.

Ga. 1921. The provision of Const. art. 7, § 6, par. 2, permitting the levying of taxes by counties for "necessary sanitation," was not eliminated by the amendment proposed by Act Aug. 4, 1910 (Laws 1910, p. 45), amending the provision relative to education.—*Avera v. Clyatt*, 109 S.E. 655, 152 Ga. 280.—*Counties* 192.

NECESSARY SELLING EXPENSES

C.C.A.9 1931. Co-operative creamery association, not organized and operated as sales agent for purpose of marketing members' products, and not turning back proceeds of sales, less "necessary selling expenses," held not exempt from taxation (Revenue Acts 1918 and 1921, Sec. 231(11)). In addition

to the necessary selling expenses, there was deducted or reserved from the proceeds of sales a sinking fund sufficient to retire the indebtedness of the association, to provide for the erection of buildings and facilities required in business, and for purchase and installation of machinery and equipment. Expenses incurred for such purposes do not fall within any reasonable definition of the term "necessary selling expenses."—*Riverdale Co-op. Creamery Ass'n v. Commissioner of Internal Revenue*, 48 F.2d 711.—*Int Rev* 3985.

C.C.A.9 1931. Co-operative creamery association, not organized and operated as sales agent for purpose of marketing members' products and not turning back proceeds of sales, less "necessary selling expenses," held not exempt from taxation. Revenue Acts 1918 and 1921, § 231 (11), 40 Stat. 1076, 42 Stat. 253.—*Riverdale Co-op. Creamery Ass'n v. Commissioner of Internal Revenue*, 48 F.2d 711.—*Int Rev* 3985, 4134.

NECESSARY SERVICES

S.D.W.Va. 1992. For purposes of determining whether professional in bankruptcy case is entitled to compensation for representation of official committee, "actual services" are those services actually rendered, and "necessary services" are those rendered in furtherance of official committee's duties and in line with its constituents' interests in case. Bankr.Code, 11 U.S.C.A. § 330.—*In re Heck's Properties, Inc.*, 151 B.R. 739.—*Bankr* 3159.

Bkrcty.D.Colo. 1995. Because postpetition earnings are property of Chapter 13 estate, but not of Chapter 7 or 11 estates, "necessary services" for which professionals are compensated may be more broadly defined in Chapter 13; thus, compensable services to Chapter 13 debtor may include those necessary to enable debtor to perform his duties under Bankruptcy Code and to enable debtor to enjoy benefits available in Chapter 13. Bankr. Code, 11 U.S.C.A. § 330(a)(1).—*In re Zwern*, 181 B.R. 80.—*Bankr* 2558, 3159, 3182.

Bkrcty.N.D.Ill. 1992. "Necessary services," with-in meaning of provision of Bankruptcy Code allowing compensation for only actual, "necessary services," are those services that aid professional's client in fulfilling its duties under Code. Bankr. Code, 11 U.S.C.A. § 330(a)(1).—*In re Lifschultz Fast Freight, Inc.*, 140 B.R. 482.—*Bankr* 3159.

Bkrcty.W.D.N.Y. 1998. Term "necessary services," as used in bankruptcy statute providing that professionals employed by bankruptcy estate are entitled to be compensated only for their reasonable and necessary services, must include reasonable measures to assure a safe and harassment-free environment for all legal personnel. Bankr.Code, 11 U.S.C.A. § 330.—*In re St. Rita's Associates Private Placement, L.P.*, 216 B.R. 490.—*Bankr* 3182.

Ill.App.1 Dist. 1997. Guardian was not supplying "necessary services" or "primary support" to ward in doing grocery shopping, taking ward to lunch, or taking ward on vacation, and thus was not entitled to recover fees for those services from

spendthrift trust of which ward was beneficiary, regardless of whether the discretionary trust was a supplemental or primary support trust. *Restatement (Second) of Trusts* § 157.—*In re Estate of McNerny*, 224 Ill.Dec. 723, 682 N.E.2d 284, 289 Ill.App.3d 589, appeal denied 227 Ill.Dec. 6, 686 N.E.2d 1162, 174 Ill.2d 562.—*Trusts* 152.

NECESSARY STATIONERY

Ala.App. 1919. A typewriter is not “necessary stationery” of the probate office, and the office of the tax collector of a county, within the meaning of Code 1907, §§ 153, 5442.—*Underwood Typewriter Co. v. Marengo County Bank*, 81 So. 543, 17 Ala. App. 47, certiorari denied 82 So. 158, 203 Ala. 128.—*Counties* 133.

NECESSARY STEP

Mich. 1961. Although liquor control commission conditioned approval of transfer of license to prospective purchasers, who had made pledge to take necessary steps to effect transfer, on purchasers’ divestiture of their chattel mortgage on fixtures of another bar, requirement of divestiture was not a “necessary step” contemplated by contract, and in absence of commission’s approval on which purchase was contingent, prospective purchasers could recover deposit and were not liable to seller for breach of contract or to agent for commission.—*Landa v. Schmidt*, 107 N.W.2d 816, 362 Mich. 561.—*Brok* 60; *Sales* 370, 391(1).

NECESSARY STEP TO PERFECT THE APPEAL

Mo. 1915. Supreme Court Rule 32 (169 S.W. xi), providing that an appellant need not abstract the record entries showing the steps taken below to perfect the appeal, but need only state that the appeal was duly taken, does not relieve the appellant from the necessity of abstracting a motion for a new trial, since an appeal may be taken without such motion, and cannot be taken until after the motion has been determined, and the motion is therefore not a “necessary step to perfect the appeal.”—*Case v. Carland*, 175 S.W. 200, 264 Mo. 463.

NECESSARY STRUCTURAL CHANGE

N.J.Err. & App. 1913. Where a county in changing a highway required a change in the abutments of a railroad bridge crossing the road, the maintenance of such bridge after its construction is not a “necessary structural change,” for which an allowance could be made the railroad.—*Board of Chosen Freeholders of Hudson County v. New York Bay R. Co.*, 86 A. 381, 84 N.J.L. 354, 55 Vroom 354.—*Em Dom* 120.

NECESSARY SUPPLIES

Ky. 1912. Ky.St. § 4426a, subd. 9, Russell’s St. § 5610a8, provides that the board of education shall lay before the fiscal court the educational needs of the county, and the county shall levy a tax for school purposes, not exceeding 20 cents on each \$100, and the proceeds of the tax shall be turned over to the county superintendent, and the county

board shall expend the money for certain designated purposes, including the purchase of “necessary supplies” and the “extension of the school term” in the subdistricts; and that upon petition of 10 voters of a subdistrict the board of education shall submit to a vote the question whether an additional tax shall be levied, and when levied it shall be the duty of the sheriff to collect it and hold it, subject to the order of the county board, for the benefit of the subdistrict voting such tax. *Held*, that such additional tax was to be expended, under the order of the board of education, for the sole use of the subdistrict levying it, and for the purposes enumerated in the statute, and the board had no power to use an additional tax levy for the purpose of transporting children to and from school; such purpose not being mentioned in the statute, and not coming within the terms “necessary supplies” or “extension of school term.”—*Shanklin v. Boyd*, 142 S.W. 1041, 146 Ky. 460, 38 L.R.A.N.S. 710.—*Schools* 100.

NECESSARY SUPPORT

C.C.A.6 1944. Under Ohio law the duty of parent to support infant child extends to “necessary support” which includes food, clothing, education, medical care, and a suitable residence, all according to the father’s means.—*Hopkins v. Commissioner of Internal Revenue*, 144 F.2d 683, 29 O.O. 347, 158 A.L.R. 1301.—*Child* S 100, 113, 116.

Ind.App. 2 Dist. 1992. “Necessary support,” for purposes of offense of neglect of dependent based upon knowing or intentionally depriving dependent of necessary support, meant essential, indispensable or absolutely required food, clothing, shelter and medical care, i.e., food, clothing, shelter and medical care without which dependent’s life or health was at risk or endangered. *West’s A.I.C.* 35-46-1-1, 35-46-1-4(a).—*Ricketts v. State*, 598 N.E.2d 597, transfer denied.—*Neglig* 1803.

Ky. 1928. “Necessary support,” under dependency provisions of Compensation Act, means income sufficient to afford character of living enjoyed by others in same class. *Workmen’s Compensation Act*.—*Melcroft Coal Co. v. Hicks*, 5 S.W.2d 1049, 224 Ky. 173.—*Work Comp* 423.

NECESSARY SUSPENSION

E.D.Mo. 1998. Under Missouri law, “necessary suspension” of operations as used in policy covering loss of business income sustained due to the necessary suspension of operations referred to total cessation of business activity, and, thus, policy did not cover loss of income from slowdown in business after move to temporary facility.—*American States Ins. Co. v. Creative Walking, Inc.*, 16 F.Supp.2d 1062.—*Insurance* 2163(1).

NECESSARY SUSTENANCE

Ga. 1993. Oxygen is not a “necessary sustenance” within context of statute proscribing cruelty to children. O.C.G.A. § 16-5-70(a).—*State v. Lawrence*, 425 S.E.2d 280, 262 Ga. 714.—*Infants* 15.

NECESSARY TO ACHIEVE A JUST AND ADEQUATE COMPENSATION

Alaska 1981. Where jury's award of \$182,650, on state's appeal from master's award of \$218,700 in eminent domain proceeding, greatly exceeded any pretrial offer by the state, attorney fees incurred by landowners in connection with such trial were "necessary to achieve a just and adequate compensation" of the landowner for purposes of rule relating to whether landowners were entitled to recover attorney fees. Rules of Civil Procedure, Rule 72(k)(4).—*Martens v. State*, Dept. of Highways, 623 P.2d 331.—*Em Dom* 265(3).

NECESSARY TO A DETERMINATION OF THE CASE

Tex.Com.App. 1940. In statute governing Supreme Court's jurisdiction in actions involving construction or validity of statutes "necessary to a determination of the case," the quoted words mean that Supreme Court's decision as to the meaning of such statute, or its application to subject matter in the case, will necessarily determine disposition to be made of the case by that court. *Vernon's Ann.Civ.St.* art. 1728, subd. 3.—*West Disinfecting Co. v. Trustees of Crosby Independent School Dist.*, 143 S.W.2d 749, 135 Tex. 492.—*App & E* 34.

Tex.Com.App. 1940. Where decision by Court of Civil Appeals was based upon two grounds, one of which did not rest upon the construction of any statute, Supreme Court did not have jurisdiction of writ of error under statute giving jurisdiction of actions involving construction or validity of statutes "necessary to a determination of the case." *Vernon's Ann.Civ.St.* art. 1728, subd. 3.—*West Disinfecting Co. v. Trustees of Crosby Independent School Dist.*, 143 S.W.2d 749, 135 Tex. 492.—*App & E* 34.

NECESSARY TO AN ADEQUATE DEFENSE

C.A.5 (Ala.) 1971. Standards governing that which is "necessary to an adequate defense" under statute governing appointment of an expert to assist defense counsel are not susceptible of arbitrary articulation and can best be developed on a case by case basis. 18 U.S.C.A. § 3006A(e).—*U.S. v. Theriault*, 440 F.2d 713, appeal after remand 474 F.2d 359, certiorari denied 93 S.Ct. 2278, 411 U.S. 984, 36 L.Ed.2d 960.—*Crim Law* 641.12(3).

C.A.5 (Ga.) 1973. Trial court did not abuse discretion in refusing to subpoena witness whose testimony would not be relevant; such testimony was per se not "necessary to an adequate defense" within requirement of rule. *Fed.Rules Crim.Proc.* rule 17(b), 18 U.S.C.A.—*U.S. v. Romano*, 482 F.2d 1183, stay denied *Yassen v. U.S.*, 94 S.Ct. 293, 414 U.S. 971, 38 L.Ed.2d 216, certiorari denied 94 S.Ct. 866, 414 U.S. 1129, 38 L.Ed.2d 753.—*Witn* 2(1).

NECESSARY TO AN EFFECTIVE REORGANIZATION

Bkrcty.N.D.Cal. 1991. To be "necessary to an effective reorganization," within meaning of provision entitling secured creditor to relief from stay

with respect to property in which debtor has no equity unless that property is "necessary to an effective reorganization," it is not enough that property be essential if any reorganization is to be effected, but instead debtor must show that reorganization can actually be achieved within reasonable period of time. *Bankr.Code*, 11 U.S.C.A. § 362(d)(2).—*In re Outlook/Century, Ltd.*, 127 B.R. 650.—*Bankr* 2429(1).

Bkrcty.D.Conn. 1980. Fact that property in question is indispensable to the debtor's survival does not mean that it is "necessary to an effective reorganization" within the meaning of the Code provision which authorizes lifting the automatic stay when the debtor does not have an equity in the property and when the property is not necessary to an effective reorganization; in order for property to be "necessary to an effective reorganization," there must also exist a reasonable possibility of a successful reorganization. *Bankr.Code*, 11 U.S.C.A. §§ 362, 362(d)(2).—*In re Riviera Inn of Wallingford, Inc.*, 7 B.R. 725.—*Bankr* 2429(1).

Bkrcty.W.D.Mo. 1994. Farm land was not "necessary to an effective reorganization," for purposes of automatic stay, once debtors' Chapter 12 case was converted to case under Chapter 7; accordingly, state could be lifted to allow judgment lien creditor to foreclose on its interest in farm land, based on debtors' admitted lack of equity therein. *Bankr.Code*, 11 U.S.C.A. § 362(d)(2)(B).—*In re Kingsley*, 161 B.R. 995.—*Bankr* 3673.

Bkrcty.S.D.N.Y. 1995. Debtor's residence was not "necessary to an effective reorganization," so that mortgagee's motion for relief from stay was properly granted based on debtor's lack of equity in residence, given complete lack of evidence that any meaningful reorganization of debtor's financial affairs was in prospect. *Bankr.Code*, 11 U.S.C.A. § 362(d)(2).—*In re Kornhauser*, 184 B.R. 425.—*Bankr* 2429(3).

NECESSARY TO AN ELEMENT OF THE OFFENSE OR ILLEGALLY COGNIZABLE DEFENSE

NMCMR 1990. Phrase "essential to a fair determination of a cause" is equivalent to standard "necessary to an element of the offense or illegally cognizable defense" for disclosure of classified information to defense. *Military Rules of Evid.*, Rule 505(i)(4)(B).—*U.S. v. Lonetree*, 31 M.J. 849, review gr in part 32 M.J. 460, decision affirmed and remanded 35 M.J. 396, certiorari denied 113 S.Ct. 1813, 507 U.S. 1017, 123 L.Ed.2d 444.—*Mil Jus* 924.

NECESSARY TO BE PAID

Iowa 1952. A widow's statutory share is an amount "necessary to be paid" in disregard of or in opposition to the will within statutory provision that all amounts necessary to be paid from estate of testator in opposition to provisions of will, shall be taken ratably from the interest of heirs, devisees, and legatees. *I.C.A.* § 633.14.—*In re Maske's Estate*, 55 N.W.2d 474, 243 Iowa 1394, 36 A.L.R.2d 285.—*Wills* 802(1).

NECESSARY TO CARRY ON HIS TRADE

Cal. 1893. West's Ann.Cal.Code Civ.Proc. § 690, exempting the tools or implements of a mechanic "necessary to carry on his trade," might include an implement used by a journeyman in his trade and necessary thereto, though such implements were furnished to the journeyman by some employers.—In re Robb, 33 P. 890, 99 Cal. 202, 37 Am.St.Rep. 48.

NECESSARY TO CARRY OUT PROPOSED PUBLIC USE

Wash.App. Div. 1 1976. Issue of whether property which city contemplates to acquire by eminent domain is "necessary to carry out proposed public use" presents a legislative question, and declaration of such necessity by appropriate legislative body will be deemed conclusive by courts, in absence of actual fraud or such arbitrary and capricious conduct as would amount to constructive fraud.—City of Seattle v. Loutsis Inv. Co., Inc., 554 P.2d 379, 16 Wash.App. 158, review denied Seattle, Respondent, v. Loutsis In Co., Petitioner,, 88 Wash.2d 1016.—Em Dom 67.

NECESSARY TO EFFECTIVE REORGANIZATION

C.A.9 (Idaho) 1987. Finding that debtor's farm property was not "necessary to effective reorganization" was not clearly erroneous, so that mortgagee was entitled to relief from stay to permit foreclosure sale to proceed, where debtor failed to establish that reorganization was reasonably possible; significantly, debtor had made no payments to mortgagee for past four years and failed to demonstrate that it would have sufficient income to fund payments contemplated by plan. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Sun Valley Ranches, Inc., 823 F.2d 1373.—Bankr 3787.

E.D.N.Y. 1992. After debtor's lack of equity in secured property has been established by creditor seeking relief from automatic stay, burden shifts to debtor to prove that property is "necessary to effective reorganization"; this means not only that property is indispensable to reorganization effort, but also that there must be a reasonable possibility of a successful reorganization within reasonable time period. Bankr.Code, 11 U.S.C.A. § 362(d).—In re Washington Associates, 147 B.R. 827.—Bankr 2439(7).

Bkrty.E.D.N.Y. 1992. To demonstrate that property was "necessary to effective reorganization," so as to preclude lifting of stay based on its lack of equity in property, debtor had to do more than show that there could be no reorganization without property; debtor had to show that property was essential for an effective reorganization that was in prospect. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re Northport Marina Associates, 136 B.R. 903.—Bankr 2429(1).

Bkrty.S.D.Ohio 1997. Debtor's home is "necessary to effective reorganization," precluding relief from automatic stay, only if property is not fungible with other living arrangements meeting debtor's

minimum living arrangements. Bankr.Code, 11 U.S.C.A. § 362(d)(2).—In re White, 216 B.R. 232.—Bankr 2429(3).

Bkrty.D.S.C. 1993. Allocation of debtor's tax payments under Chapter 11 plan first to the trust fund portion of its liability was "necessary to effective reorganization," and could be ordered by bankruptcy court, regardless of whether payments under plan were voluntary or involuntary in nature; debtor's principal testified that, prior to filing of debtor's motion for allocation of payments, he had not been able to concentrate on debtor's business operations as result of constant harassment by IRS agent regarding his personal liability for trust fund portion of taxes.—In re M.C. Tooling Consultants, Inc., 165 B.R. 590.—Bankr 2124.1, 3570; Int Rev 4832.

NECESSARY TO HIS DEPARTURE

U.S.Cal. 1952. As used in provision of Immigration Act that if alien against whom order of deportation is outstanding shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure, he shall be guilty of felony, words "necessary to his departure" as applied to deportations, normally refer to lawful departure from this country and lawful entrance into another. Immigration Act of 1917, § 20(a-c), as amended, 8 U.S.C.A. § 156(a-c); 18 U.S.C.A. § 3731.—U.S. v. Spector, 72 S.Ct. 591, 343 U.S. 169, 96 L.Ed. 863, rehearing denied 72 S.Ct. 1040, 343 U.S. 951, 96 L.Ed. 1353.—Aliens 55.1.

NECESSARY TO MAKE IT UNDERSTOOD

Cal.App. 2 Dist. 1960. The statute providing that when part of a declaration or conversation is given in evidence by one party, the whole on the same subject may be inquired into by the other, is but a codification of a generally prevailing rule and is subject only to the qualification that the additional matter be relevant to the portion previously introduced, and the phrase in the statute, "necessary to make it understood", does not presuppose or have any necessary relationship to ambiguity in the primary admission. West's Ann.Code Civ.Proc. § 1854.—Rosenberg v. Wittenborn, 3 Cal.Rptr. 459, 178 Cal.App.2d 846.—Evid 155(1).

NECESSARY TO MANUFACTURE OF PRODUCT

Wash. 1976. Boiler installed by paper manufacturer, which performed recovery functions essential for profitable production of kraft pulp, was "necessary to manufacture of product," for purposes of limiting certification of boiler as qualified pollution control facility entitling paper manufacturer to tax credit and exemption, even though motivating factors behind installation of boiler included need to comply with state emission control regulations. RCWA 82.34.010 et seq., 82.34.030.—Weyerhaeuser Co. v. State Dept. of Ecology, 545 P.2d 5, 86 Wash.2d 310.—Tax 237.

NECESSARY TO NEW BEGINNING

Bkrty.E.D.Mo. 1990. Rifles that debtor rarely used were not “necessary to new beginning,” so that debtor could not avoid nonpossessory, nonpurchase-money lien therein on theory the rifles were exempt under Missouri law as household goods. Bankr.Code, 11 U.S.C.A. § 522(f)(2)(A).—In re McCain, 114 B.R. 652.—Bankr 2788.

NECESSARY TOOL AND IMPLEMENT

Kan. 1927. Foreman’s automobile, used in employment, held exempt from execution as “tool or implement”; “necessary tool and implement”. Rev. St. 22–511, 60–3504.—Dowd v. Heuson, 252 P. 260, 122 Kan. 278, 52 A.L.R. 823.—Exemp 45.

NECESSARY TOOL OR INSTRUMENT

W.D.La. 1951. Where bankrupt was required to furnish his own automobile, which was indispensable in carrying on his work as sales manager in certain areas, because it was a policy of employer not to furnish sales managers with automobiles, automobile was a “necessary tool or instrument” within a meaning of statute providing that sheriff or constable cannot seize “necessary tools or instruments” used in calling, trade, or profession by which debtor makes a living. Code Prac.La. art. 644 (LSA–R.S. 13:3881).—In re Trotter, 97 F.Supp. 249.—Exemp 45.

La.App. 2 Cir. 1933. Traveling insurance agent’s automobile held not exempt from execution as “necessary tool or instrument” for exercise of calling. Code Prac. art. 644 (LSA–C.C.P. art. 2253); LSA–C.C. art. 2705.—Morris–Wilson Buick Co. v. Robertson, 146 So. 339.—Exemp 45.

NECESSARY TOOLS AND IMPLEMENTS

Kan. 1928. Twelve or more heavy pieces of machinery driven by motor held not exempt as matter of law as “necessary tools and implements”. Rev.St.1923, 60–3504, subd. 8.—Putnam Inv. Co. v. Titus, 266 P. 55, 125 Kan. 623.—Exemp 45.

NECESSARY TOOLS OF EMPLOYMENT

Cal. 1894. “Necessary tools of employment,” within the meaning of West’s Ann.Code Civ.Proc. § 690, subd. 4, exempting the tools or implements of a mechanic or artisan necessary to carry on his trade, does not include any number of presses and amount of type claimed by a person engaged in the printing business, but only such as are necessary to carry on his trade. The question of how much property is exempted under the statute is for the jury.—In re Mitchell, 36 P. 840, 102 Cal. 534.

NECESSARY TOOLS OR INSTRUMENTS

W.D.La. 1951. Where bankrupt was required to furnish his own automobile, which was indispensable in carrying on his work as sales manager in certain areas, because it was a policy of employer not to furnish sales managers with automobiles, automobile was a “necessary tool or instrument” within a meaning of statute providing that sheriff or constable cannot seize “necessary tools or instru-

ments” used in calling, trade, or profession by which debtor makes a living. Code Prac.La. art. 644 (LSA–R.S. 13:3881).—In re Trotter, 97 F.Supp. 249.—Exemp 45.

NECESSARY TO OPERATE THE TRIP OR CAR

W.Va. 1949. Act of mining employee injured while attempting to get on a moving car constituted “willful misconduct” within the statute barring compensation unless he came within the statutory category of persons excepted therefrom as “necessary to operate the trip or car”. Code, 22–2–62, 23–4–2.—Thompson v. State Compensation Com’r, 54 S.E.2d 13, 133 W.Va. 95.—Work Comp 785.

W.Va. 1949. A mining employee charged with loading and unloading a supply train hauling supplies from one place to another in a coal mine is a person “necessary to operate the trip or car” within exception of statute inhibiting employees in a coal mine from riding loaded cars or getting on or off of car while in motion. Code, 22–2–62.—Thompson v. State Compensation Com’r, 54 S.E.2d 13, 133 W.Va. 95.—Work Comp 785.

NECESSARY TO PERMIT THE REORGANIZATION

8th Cir.BAP (Mo.) 2001. Phrase “necessary to permit the reorganization” of debtor, as used in bankruptcy statute permitting Chapter 11 debtor to modify or reject its collective bargaining agreements (CBAs) only as necessary to permit the reorganization of debtor, means necessary to accommodate confirmation of Chapter 11 plan. Bankr.Code, 11 U.S.C.A. § 1113(b)(1)(A).—In re Family Snacks, Inc., 257 B.R. 884.—Bankr 3113.

NECESSARY TO PRESERVE HER LIFE

E.D.Ky. 1972. Phrase “necessary to preserve her life” contained in Kentucky statute proscribing abortions except when necessary to preserve life of the woman is not unconstitutionally vague although perhaps technically imprecise, and the phrase means that an abortion is unavailable except if it is reasonably certain that a woman’s continued pregnancy will result in her death. KRS 436.020.—Crossen v. Attorney General of Com. of Ky., 344 F.Supp. 587, vacated 93 S.Ct. 1413, 410 U.S. 950, 35 L.Ed.2d 683.—Crim Law 13.1(2.5).

Ky. 1972. Phrase “necessary to preserve her life” contained in statute proscribing abortions except when necessary to preserve life of woman is not unconstitutionally vague although perhaps technically imprecise, and phrase means that an abortion is unavailable except if it is reasonably certain that a woman’s continued pregnancy will result in her death. KRS 436.020.—Sasaki v. Com., 485 S.W.2d 897, vacated 93 S.Ct. 1422, 410 U.S. 951, 35 L.Ed.2d 684, conformed to 497 S.W.2d 713.—Crim Law 13.1(2.5).

NECESSARY TO PRODUCTION OF GOODS FOR COMMERCE

U.S.Ill. 1944. Firefighters, employed by packing company at its soap factory at instance of compa-

ny's insurance department, were engaged in work "necessary to production of goods for commerce" within overtime compensation provisions of Fair Labor Standards Act. Fair Labor Standards Act of 1938, §§ 3(j), 7, 29 U.S.C.A. §§ 203(j), 207.—*Armour & Co. v. Wantock*, 65 S.Ct. 165, 323 U.S. 126, 89 L.Ed. 118, rehearing denied 65 S.Ct. 427, 323 U.S. 818, 89 L.Ed. 649.—Commerce 62.6, 62.62.

U.S.N.Y. 1945. Executive officers and administrative employees working in central office building of employer which operated in interstate commerce were engaged in "production of goods for commerce", within terms of Fair Labor Standards Act, as much as those who processed and worked on tangible products in manufacturing plants, and hence maintenance employees in such building were engaged in occupations "necessary to production of goods for commerce" within the act. Fair Labor Standards Act of 1938, §§ 3(j), 7(a), 29 U.S.C.A. §§ 203(j), 207(a).—*Borden Co. v. Borella*, 65 S.Ct. 1223, 325 U.S. 679, 89 L.Ed. 1865, 161 A.L.R. 1258.—Commerce 62.63, 62.64.

C.C.A.10 (Colo.) 1946. Sand and gravel company employees who mined, mixed, washed, and prepared cast shed sand which was sold to and used by a steel mill not owned by sand and gravel company in production of iron and steel commodities which were shipped in interstate commerce to all parts of United States, were engaged in an occupation "necessary to production of goods for commerce" within the Fair Labor Standards Act. Fair Labor Standards Act of 1938, §§ 3(j), 7(a), 29 U.S.C.A. §§ 203(j), 207(a).—*Walling v. Amidon*, 153 F.2d 159.—Commerce 62.47, 62.62.

D.Minn. 1945. Maintenance employees of two cooperatives which were engaged in distributing electricity that was generated in state and did not cross state boundaries in distribution were engaged in work "necessary to production of goods for commerce", within the Fair Labor Standards Act, where electricity was used by certain of the consumers for production of goods, a substantial portion of which found their way into interstate commerce. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—*Phillips v. Meeker Co-op. Light & Power Ass'n*, 63 F.Supp. 733, affirmed 158 F.2d 698.—Commerce 62.62, 62.63.

D.Minn. 1945. The office employees of two cooperatives which supplied electrical power used by certain of its consumers in production of goods for commerce were engaged in work "necessary to production of goods for commerce" within Fair Labor Standards Act. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—*Phillips v. Meeker Co-op. Light & Power Ass'n*, 63 F.Supp. 733, affirmed 158 F.2d 698.—Commerce 62.64.

D.Minn. 1945. In determining whether maintenance employees of two cooperatives distributing electricity that was generated in state and which did not cross state boundaries in distribution were engaged in work "necessary to production of goods for commerce" within the Fair Labor Standards Act because certain of consumers used electricity for production of goods for commerce, the test was not

the amount or volume of goods produced by consumers for commerce, but it was sufficient that the production was constant and consistent. Fair Labor Standards Act of 1938, § 3(j), 29 U.S.C.A. § 203(j).—*Phillips v. Meeker Co-op. Light & Power Ass'n*, 63 F.Supp. 733, affirmed 158 F.2d 698.—Commerce 62.62, 62.63.

Ind.App. 1945. An employee of machine company who spent his time in keeping equipment of mining company, which was his employer's principal customer, suitable for production of goods in interstate commerce, was engaged in an occupation "necessary to production of goods for commerce" within Fair Labor Standards Act. Fair Labor Standards Act of 1938, §§ 3(j), 6, 7, 29 U.S.C.A. §§ 203(j), 206, 207.—*Princeton Min. Co. v. Veach*, 63 N.E.2d 306, 116 Ind.App. 332.—Commerce 62.63, 62.65.

NECESSARY TO PRODUCTION OF GOODS INTENDED FOR INTERSTATE COMMERCE

E.D.Pa. 1941. Where landlord leased portions of building to manufacturing concern engaged in interstate commerce and as part of the consideration for the rent furnished services of elevator operators, watchmen, firemen, engineer, carpenter, carpenter's helper and a porter, the activities of the landlord's employees were "necessary to production of goods intended for interstate commerce" manufactured by the tenants, and therefore the employees were within the protection of the Fair Labor Standards Act. Fair Labor Standards Act of 1938, §§ 3(j), 6, 7, 29 U.S.C.A. §§ 203(j), 206, 207.—*Fleming v. A. B. Kirschbaum Co.*, 38 F.Supp. 204, affirmed 124 F.2d 567, certiorari granted 62 S.Ct. 800, 315 U.S. 792, 86 L.Ed. 1195, affirmed *Kirschbaum v. Walling*, 62 S.Ct. 1116, 316 U.S. 517, 86 L.Ed. 1638.—Commerce 62.50, 62.63.

NECESSARY TO PROTECT THE INTERESTS AND TITLE TO LAND

W.Va. 1887. "Necessary to protect the interests and title to land," as used in a power of attorney authorizing him to do "all things necessary to protect the interests and title to land" described therein belonging to the grantor of the power, should be construed to include the payment of taxes, and the redemption of land for the owner from the purchaser thereof at a sale for delinquent taxes.—*Townshend v. Shaffer*, 3 S.E. 586, 30 W.Va. 176.

NECESSARY TO SUCH USE

Ariz.App. Div. 1 1975. Term "necessary to such use," within requirement that city may not condemn property for airport purposes unless property is necessary for that airport use, contemplates a time element. A.R.S. § 2-306.—*City of Phoenix v. McCullough*, 536 P.2d 230, 24 Ariz.App. 109, 80 A.L.R.3d 1071.—Em Dom 56.

NECESSARY TO THE APPEAL'S RESOLUTION

Tex.App.—Houston [1 Dist.] 1998. Destroyed videotape of driver performing field sobriety tests was "necessary to the appeal's resolution" and thus defendant was entitled to new trial; driver appealed

admission of audio portion of video on ground that it did not include warnings required for custodial interrogation, but state and driver disagreed whether tests involved custodial interrogation. *Vernon's Ann. Texas C.C.P. art. 38.22, §§ 3(a)(2), 5; Rules App. Proc., Rule 34.6(f).*—*Osuch v. State*, 976 S.W.2d 810.—*Crim Law* 700(9), 1114.1(3).

NECESSARY TO THE ENJOYMENT

Ky. 1947. "Necessary to the enjoyment" of dominant estate, as necessary element of creation of servitude, does not mean mere convenience to dominant owner nor that owner of dominant estate can not use his property to any degree without it, but that it is reasonably necessary to use to which owner has subjected or lawfully may subject the property.—*Sievers v. Flynn*, 204 S.W.2d 364, 305 Ky. 325.—*Ease* 16.

Ky. 1947. That city required users of property within its limits to dispose of sewage through city system, and that purchasers of land connecting with city system, by sewer line in other land could not otherwise connect with the system without passing through other property, made the line "necessary to the enjoyment" of the lands so as to create servitude by implication.—*Sievers v. Flynn*, 204 S.W.2d 364, 305 Ky. 325.—*Ease* 16.

NECESSARY TO THE OUTCOME

C.A.6 (Ohio) 2001. Where one ground for the prior decision is clearly primary and the other only secondary, the secondary ground is not "necessary to the outcome" for the purposes of issue preclusion. *Restatement (Second) of Judgments § 27, comment.*—*National Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, rehearing en banc denied, certiorari denied *Time Warner Entertainment Co., L.P. v. National Satellite Sports, Inc.*, 122 S.Ct. 1127, 534 U.S. 1156, 151 L.Ed.2d 1019.—*Judgm* 724.

NECESSARY TO THE PRODUCTION OF GOODS FOR COMMERCE

U.S.N.Y. 1945. Renting office space in a building exclusively set aside for unrestricted variety of office work was "local business" and employees of such building were not in an occupation "necessary to the production of goods for commerce" so as to be entitled to benefits of Fair Labor Standards Act. *Fair Labor Standards Act of 1938, §§ 3(j), 6, 7, 16(b)*, 29 U.S.C.A. §§ 203(j), 206, 207, 216(b).—*10 East 40th St. Bldg. v. Callus*, 65 S.Ct. 1227, 325 U.S. 578, 89 L.Ed. 1806, 161 A.L.R. 1263.—*Commerce* 62.50.

D.Conn. 1947. Factors to be considered in determining whether employee's work is "necessary to the production of goods for commerce", within Fair Labor Standards Act, are whether the place of employment is in a plant engaged in production or remote therefrom, whether employee is compensated by producer of goods for commerce or by independent contractor, and whether service performed by employee is shown by evidence materially to increase efficiency of production work. *Fair Labor Standards Act of 1938, §§ 7, 16*, as amended, 29

U.S.C.A. §§ 207, 216.—*Bayer v. Courtemanche*, 76 F.Supp. 193.—*Commerce* 62.47.

D.Conn. 1947. One employed by independent contractor furnishing cafeteria services to production workers in a manufacturing plant engaged in production of goods for commerce was not engaged in occupation "necessary to the production of goods for commerce" within Fair Labor Standards Act, in absence of showing that time for lunch was too short for production workers to eat outside cafeteria, or that there were no restaurants available nearby, or that service in them was inadequate for workers in the area. *Fair Labor Standards Act of 1938, §§ 7, 16*, as amended, 29 U.S.C.A. §§ 207, 216.—*Bayer v. Courtemanche*, 76 F.Supp. 193.—*Commerce* 62.62.

D.Md. 1967. Renting office space in a building exclusively set aside for unrestricted variety of office work was "local business" and employees of such building were not in an occupation "necessary to the production of goods for commerce" so as to be entitled to benefits of Fair Labor Standards Act. *Fair Labor Standards Act of 1938, §§ 1-19*, 29 U.S.C.A. §§ 201-219; 28 U.S.C.A. § 1337.—*Pollard v. Herbert J. Siegel Org., Inc.*, 272 F.Supp. 821.—*Commerce* 62.50.

NECESSARY TO THE PRODUCTION OF THE GOODS FOR COMMERCE

D.Conn. 1947. The phrase "necessary to the production of the goods for commerce", as used in Fair Labor Standards Act, does not mean "indispensable". *Fair Labor Standards Act of 1938, §§ 7, 16*, as amended, 29 U.S.C.A. §§ 207, 216.—*Bayer v. Courtemanche*, 76 F.Supp. 193.—*Commerce* 62.47.

NECESSARY TRAVELING EXPENSE

N.Y.Sup. 1909. The use of automobiles by commissioners of appraisal in condemnation proceedings is not a "necessary expense" or "necessary traveling expense", which under Laws 1905, c. 725, § 5, and chapter 724, § 32, is to be allowed them, there being railroads, on which many trains run, going very near all parts of the lands, and livery teams, being accessible; the statute contemplating the ordinary method of travel.—*In re Bensel*, 124 N.Y.S. 716.—*Em Dom* 230.

NECESSARY TREATMENT

N.J. 1996. "Necessary treatment" standard for involuntary commitment of minors, which requires finding that individual "is in need of intensive psychiatric therapy that cannot practically or feasibly be rendered in home or in community or on outpatient basis" is not impermissibly vague; language denotes minimally that involuntary commitment must be based on showing of need for inpatient care, consisting of intensive psychiatric therapy that can be provided only at psychiatric hospital. *U.S.C.A. Const. Amend. 14; N.J.S.A. Const. Art. 1, par. 1; R. 4:74-7(f).*—*Matter of Commitment of N.N.*, 679 A.2d 1174, 146 N.J. 112.—*Mental H* 36.

NECESSARY USE

Ill.App. 1 Dist. 1994. Owner of dominant estate is entitled to necessary use of easement, and "necessary use" is such use as is reasonably necessary for full enjoyment of premises; moreover, although owner of dominant estate has duty to maintain and repair easement, he cannot make material alterations in character of the easement.—Seymour v. Harris Trust & Sav. Bank of Chicago, 201 Ill.Dec. 553, 636 N.E.2d 985, 264 Ill.App.3d 583, appeal denied 206 Ill.Dec. 846, 645 N.E.2d 1368, 158 Ill.2d 565.—Ease 53, 54.

Ill.App. 1 Dist. 1985. Owner of dominant estate is entitled to necessary use of the easement; "necessary use" has been defined as such use as is reasonably necessary for full enjoyment of the premises.—Flower v. Valentine, 90 Ill.Dec. 703, 482 N.E.2d 682, 135 Ill.App.3d 1034.—Ease 52.

Ill.App. 2 Dist. 1998. Owners of dominant estate are entitled to "necessary use" of easement, or in other words, the use that is reasonably necessary for full enjoyment of premises.—McMahon v. Hines, 232 Ill.Dec. 269, 697 N.E.2d 1199, 298 Ill.App.3d 231.—Ease 40.

Ill.App. 2 Dist. 1993. "Necessary use" of easement, which owner of dominant estate is legally entitled to exercise, is such use as is reasonably necessary for full enjoyment of premises.—McCann v. R.W. Duntzman Co., 182 Ill.Dec. 542, 609 N.E.2d 1076, 242 Ill.App.3d 246, appeal denied 186 Ill.Dec. 383, 616 N.E.2d 336, 151 Ill.2d 566.—Ease 40.

NECESSARY VEGETABLES

N.Y.A.D. 3 Dept. 1909. The term "necessary," as used in Code Civ.Proc. § 1390, providing that all "necessary vegetables" actually provided for family use should be exempt from levy, is a word of qualification, and qualifies the extent of the exemption.—McCarthy v. McCabe, 115 N.Y.S. 829, 131 A.D. 396.

NECESSARY WEARING APPAREL

S.D.Ill. 1939. Evidence concerning circumstances under which bankrupt, while financially stable and prosperous, purchased watch, consistory ring and diamond shirt stud, held to authorize finding that such property was "necessary wearing apparel" and should be exempted to bankrupt. S.H.A. ch. 52, § 13, subd. 1.—In re Deacon, 27 F.Supp. 296.—Bankr 2802.

S.D.Ill. 1939. If property alleged to be exempt to bankrupt as "necessary wearing apparel" is of extreme value and so disproportionate to purchasing ability as to lead court to believe that retention of property over a period of years was for purpose of defrauding bankrupt's creditors, court could determine that property was not "necessary wearing apparel," but question depends on facts in each case. S.H.A. ch. 52, § 13, subd. 1.—In re Deacon, 27 F.Supp. 296.—Bankr 2775.

Cal.App. 3 Dist. 1923. Watches being so generally worn are exempt from execution within Code

Civ.Proc. § 690, subd. 2, exempting "necessary wearing apparel".—In re Millington's Estate, 218 P. 1022, 63 Cal.App. 498.—Exemp 40.

Cal.App. 3 Dist. 1923. An order setting aside to a surviving husband diamond rings, diamond earrings, and a gold watch and chain under Code Civ.Proc. § 1465 (repealed 1931. See Prob.Code, §§ 660, 661), as exempt from execution, must be modified by striking out the earrings and diamond rings as not being within the meaning of "necessary wearing apparel" exempted by § 690, subd. 2.—In re Millington's Estate, 218 P. 1022, 63 Cal.App. 498.—Exemp 40.

Cal.Super. 1952. As used in statute exempting necessary wearing apparel of debtor from execution, term "necessary wearing apparel" means necessary to particular debtor considering all the circumstances, his station in life, and his particular type of employment, while term "common necessities of life", as used in statute exempting all of earnings of debtor if necessary for use of support of debtor's family residing within state unless such debts were incurred by debtor, his wife, or family, for common necessities of life, means those things which are commonly required by persons for the sustenance of life regardless of their employment or status. Code Civ.Proc. §§ 690–690.25, 690.2, 690.10, 690.11, 690.20, 1858.—Los Angeles Finance Co. v. Flores, 243 P.2d 139, 110 Cal.App.2d Supp. 850.—Exemp 40, 68.

Or. 1885. A watch of moderate value may be exempt from execution as "necessary wearing apparel," when it is made to appear that the watch and other articles reserved as wearing apparel do not exceed the amount limited by the statute. But in such case it lies with the party claiming the exemption to prove affirmatively the facts which establish his claim.—McClung v. Stewart, 8 P. 447, 12 Or. 431, 53 Am.Rep. 374.—Exemp 40, 148.

Or. 1885. A watch of moderate value may be claimed as "necessary wearing apparel," under Code, § 297, ORS 23.530, exempting wearing apparel to the value of \$100.—McClung v. Stewart, 8 P. 447, 12 Or. 431, 53 Am.Rep. 374.—Exemp 40.

R.I. 1953. "Necessary wearing apparel" in statute exempting necessary wearing apparel from attachment is apparel necessary in ordinary circumstances of family living which is not superfluous luxury. Gen.Laws 1938, c. 557, § 1, subd. 14.—Arch Lumber Co. v. Dohm, 98 A.2d 840, 81 R.I. 69.—Exemp 40.

S.D. 1896. "Necessary wearing apparel," as used in exemption statutes, will be held to include a watch and chain constantly carried by the debtor.—Brown v. Edmonds, 66 N.W. 310, 8 S.D. 271, 59 Am.St.Rep. 762.

NECESSARY WILDLIFE HABITAT

Vt. 1989. Wildlife habitat is "necessary," within meaning of statute restricting any development that significantly imperils "necessary wildlife habitat," if it is decisive to survival of those members of particular species which depend upon that habitat; habi-

tat need not be necessary for survival of species within state as whole. 10 V.S.A. § 6086(a)(8)(A).—In re Southview Associates, 569 A.2d 501, 153 Vt. 171.—*Environ Law* 526.

NECESSARY WITNESS

U.S. Armed Forces 1998. A witness whose testimony is necessary and material must be produced or the proceedings abated, unless the testimony would be merely cumulative to the testimony of other defense witnesses, and a "necessary witness" is one whose testimony would contribute to a party's presentation of the case in some positive way on a matter in issue. R.C.M. 703(b).—*U.S. v. Powell*, 49 M.J. 220.—*Mil Jus* 1124.

S.D.Ind. 1998. Under Indiana Rules of Professional Conduct, attorney for disabled university employee did not have to be disqualified from employee's Americans with Disabilities Act (ADA) lawsuit as "necessary witness" based on attorney's participation in interactive process between university and employee to find reasonable accommodations for employee's disability; given long paper trail, there was no apparent reason why testimony from attorney about her subjective motives, purposes, or thoughts would be essential to inquiry, and there was no indication that attorney would give evidence tending to show that employee was acting in bad faith. Americans with Disabilities Act of 1990, § 102(b)(5)(A), 42 U.S.C.A. § 12112(b)(5)(A); Ind.Rules of Prof.Conduct, Rule 3.7.—*Harter v. University of Indianapolis*, 5 F.Supp.2d 657.—*Atty & C* 22.

S.D.Ind. 1998. "Necessary witness," within meaning of Indiana Rule of Professional Conduct generally prohibiting attorney from acting as advocate at trial in which attorney is likely to be necessary witness, is not same thing as "best" witness. Ind.Rules of Prof.Conduct, Rule 3.7.—*Harter v. University of Indianapolis*, 5 F.Supp.2d 657.—*Atty & C* 22.

S.D.Ind. 1998. Opposing attorney is not "necessary witness," within meaning of Indiana Rule of Professional Conduct generally prohibiting attorney from acting as advocate at trial in which attorney is likely to be necessary witness, if evidence that would be offered by having attorney testify can be elicited through other means. Ind.Rules of Prof.Conduct, Rule 3.7.—*Harter v. University of Indianapolis*, 5 F.Supp.2d 657.—*Atty & C* 22.

S.D.Ind. 1998. Mere hope and remote prospect that university employee's attorney might give evidence tending to show that employee was acting in bad faith in interactive process with university to find reasonable accommodations for employee's disability, even indirectly, did not make attorney a "necessary witness" who had to be disqualified, pursuant to Indiana Rule of Professional Conduct, in employee's action against university under Americans with Disabilities Act (ADA). Americans with Disabilities Act of 1990, § 102(b)(5)(A), 42 U.S.C.A. § 12112(b)(5)(A); Ind.Rules of Prof.Conduct, Rule 3.7.—*Harter v. University of Indianapolis*, 5 F.Supp.2d 657.—*Atty & C* 22.

S.D.Ind. 1998. University employee's suggestion that he might offer evidence that university refused to meet with him and discuss reasonable accommodations for his disability if he insisted on having his attorney present did not make attorney a "necessary witness" under Indiana Rule of Professional Conduct and require attorney's disqualification in employee's suit against university under Americans with Disabilities Act (ADA), since employee himself could testify to his communications with those in university who might have refused to meet with him. Americans with Disabilities Act of 1990, § 102(b)(5)(A), 42 U.S.C.A. § 12112(b)(5)(A); Ind.Rules of Prof.Conduct, Rule 3.7.—*Harter v. University of Indianapolis*, 5 F.Supp.2d 657.—*Atty & C* 22.

Ala.Crim.App. 1999. "Necessary witness," for purposes of rule providing that lawyer shall not act as advocate at trial in which he is likely to be necessary witness, is one who has crucial information in his possession which must be divulged. Rules of Prof.Conduct, Rule 3.7.—*Bradford v. State*, 734 So.2d 364, rehearing denied.—*Atty & C* 22.

Mass.App.Ct. 1996. In reviewing denial of defendant's motion to order witness to appear, appeals court must determine whether witness was necessary to adequate defense; a "necessary witness" is one whose testimony is relevant, material, and not cumulative.—*Com. v. Degrenier*, 662 N.E.2d 1039, 40 Mass.App.Ct. 212.—*Witn* 4.

NECESSARY WORK

Tex.Civ.App.—Beaumont 1940. Though working on Sundays is forbidden by penal statutes, unless the work is "necessary work," yet question whether deceased oil well driller was engaged in "necessary work" in working on Sunday, so as to render contract of employment requiring Sunday work void and preclude recovery of compensation for his death, was for jury, since oil field work is a kind of work generally recognized as "necessary work" which may be lawfully performed on Sunday. *Vernon's Ann.P.C. arts. 283, 284.*—*Federal Underwriters Exchange v. Bickham*, 136 S.W.2d 880, affirmed 157 S.W.2d 356, 138 Tex. 128.—*Work Comp* 1927.

NECESSITAS FACIT LICITUM QUOD ALIAS NON EST LICITUM

La.App. 3 Cir. 1997. Under the definition of "necessity," or "necessitas facit licitum quod alias non est licitum," as it relates to criminal culpability, a person is excused from criminal liability if he acts under a duress of circumstances to protect life or limb or health in a reasonable manner and with no other acceptable choice. LSA-R.S. 14:18.—*State v. Recard*, 704 So.2d 324, 1997-754 (La.App. 3 Cir. 11/26/97), writ denied 805 So.2d 200, 1997-3187 (La. 5/1/98).—*Crim Law* 38.

NECESSITATE

Tex. 1972. Within accident policy providing that as condition of disability coverage injuries in question must "necessitate [insured's] continuing care by a licensed doctor," word "necessitate" did not

mean that care of doctor must have been medically indispensable or even medically expedient; condition was included in policy primarily to prevent or discourage fraudulent claims and was served when the alleged injuries were treated by doctors throughout the period of claimed disability.—*Kirk v. Standard Life & Acc. Ins. Co.*, 475 S.W.2d 570.—Insurance 2556.

NECESSITATE AS A RESULT OR LEGAL CONSEQUENCE

Ind. 1907. The word "involve" means "to imply"; "to include"; or "necessitate as a result or legal consequence."—*Baltimore & O. S. W. R. Co. v. Evans*, 82 N.E. 773, 169 Ind. 410.

NECESSITATED IRREGULAR HOURS OF WORK

E.D.Mo. 1973. Where hours that discharged assistant bank examiner, who entered into contract providing, inter alia, that number of hours used in computing his weekly salary would be 45 hours or number of hours of actual work if greater than 45, would have to work during particular examinations could not be controlled by employer and could not be anticipated with certainty, such examiner's duties "necessitated irregular hours of work," for purposes of requirements of Fair Labor Standards Act, with respect to overtime, that such a contract be bona fide and that duties of employee necessitate irregular hours of work. *Fair Labor Standards Act of 1938*, § 7(a, f), 29 U.S.C.A. § 207(a, f).—*Boll v. Federal Reserve Bank of St. Louis*, 365 F.Supp. 637, 21 Wage & Hour Cas. (BNA) 876, affirmed 497 F.2d 335, 21 Wage & Hour Cas. (BNA) 886.—Labor 1278.1.

NECESSITATED TREATMENT

Tex.App.—Houston [1 Dist.] 1995. Evidence in prosecution for failure to stop and render aid supported finding that complainant/automobile accident victim's injuries "necessitated treatment"; although complainant declined both treatment at scene and ambulance transportation, she did go to hospital, where she was examined by physician and diagnosed as having "mild head injury." *Vernon's Ann.Texas Civ.St. art. 6701d*, §§ 10(e), 38.—*Thom-as v. State*, 923 S.W.2d 645.—Autos 355(8).

NECESSITIES

W.D.Okla. 1988. Finding of bankruptcy court, that video cassette recorder, lawn mower, and other household goods were not personal "necessities" exempt from claims of creditors under Oklahoma law, was not clearly erroneous, so that debtor could not avoid liens in goods under bankruptcy lien avoidance statute. *Bankr.Code*, 11 U.S.C.A. § 522(f); 31 O.S.1981, § 1.—*In re Michalak*, 101 B.R. 276.—Bankr 2775; Exemp 42.

Ga. 1967. Included in definition of "necessities" to be furnished a wife for which husband may be bound is an attorney to represent her when she is charged with a crime. *Code*, § 53-510.—*Citizens and Southern Nat. Bank v. Orkin*, 156 S.E.2d 86, 223 Ga. 385.—Hus & W 19(18).

Ind. 1909. Plumbers' supplies are "necessities" of life and a staple commodity, and a combination controlling such supplies to the extent that it either does, or tends to, prevent or restrain competition may be prohibited.—*Knight & Jillson Co. v. Miller*, 87 N.E. 823, 172 Ind. 27, 18 Am. Ann. Cas. 1146.—Monop 12(2).

Ky. 1940. Under the statute making a husband liable for his wife's "necessities", a wife's necessities included board in a sanatorium in which a husband had placed his wife. *Ky.St. § 2130*.—*Fidelity & Cas. Co. of New York v. Downey*, 143 S.W.2d 869, 284 Ky. 72.—Hus & W 19(14).

La.App.Orleans 1951. Dresses, umbrella, cologne, hosiery, scarf, men's shirts worn with slacks at home, costume jewelry, slippers and underthings costing \$131.41 were "necessities", and cost was not out of proportion to means and condition of husband earning \$42.50 a week, and hence husband failing to furnish such articles to wife who was in necessitous circumstances and who was separated from husband without fault of wife was liable to store furnishing such articles to wife on husband's credit. *Rev.Civ.Code*, art. 120.—*D. H. Holmes Co. v. Huth*, 49 So.2d 875.—Hus & W 19(3), 19(14).

Mo. 1960. In action by divorced wife, who had been granted a divorce decree awarding her custody of two children without any provision with respect to support and maintenance of children, against divorced husband to recover amount expended by divorced wife for support and maintenance of children, evidence that expenses incurred by divorced wife for the children embraced food, lodging, clothing, medical attention, tuition and school books was sufficient to establish that items furnished by divorced wife for the children were in fact "necessities".—*Josey v. Forde*, 338 S.W.2d 14.—Child S 200.

N.H. 1955. Under will providing for payments from income and principal of trust fund for "necessities" and "needs" of beneficiary, the words "necessities" and "needs" had no fixed or rigid meaning, but could not cover that which would be merely desirable and not reasonably essential.—*Amoskeag Trust Co. v. Wentworth*, 111 A.2d 198, 99 N.H. 346.—Wills 684.9.

N.J.Super.A.D. 1951. A bar dispensing unit purchased by insane person was not within the category of "necessities" for which a person incompetent to contract by reason of mental incapacity is required by statute to pay a reasonable price. *R.S. 46:30-8*; *R.S. 46:30-8*, N.J.S.A.—*Hillsdale Nat. Bank v. Sansone*, 78 A.2d 441, 11 N.J.Super. 390, 24 A.L.R.2d 1374.—Mental H 375.

N.Y.City Ct. 1957. Services rendered to wife by attorney in obtaining conviction of husband for failure to adequately support his wife and resulting in orders directing husband to pay wife a certain sum per week, were "necessities" for which husband was liable. *Code Cr.Proc.*, § 899, subd. 1.—*Schulgasser v. Marion*, 163 N.Y.S.2d 814, 7 Misc.2d 950.—Hus & W 19(18).

Or. 1941. Food, shelter and clothing are physical "necessities". In an enlightened community the common education of a child is a moral and social "necessity".—*Jackman v. Short*, 109 P.2d 860, 165 Or. 626, 133 A.L.R. 887.

Or.App. 1994. Father's discretionary expenses did not fall within statutory category of "necessities" that would rebut his ability to pay the child support guidelines' presumptive amount. ORS 25.280(2).—*Matter of Marriage of Pedroza*, 875 P.2d 478, 128 Or.App. 102.—*Child S 146*.

Pa. 1887. "Necessities," as used in a conveyance in trust of certain real estate for the support and maintenance of the grantors during their lives, and, in case the income should prove insufficient to supply their wants and necessities, a portion or all of the real estate should be sold or mortgaged for that purpose, embraces within its meaning the requirement both for shelter and occupation.—*Taylor's Appeal*, 11 A. 307, 20 W.N.C. 238, 35 P.L.J. 133, 44 Leg.Int. 402, 7 Sadler 466, 4 Lanc.Rev. 381.

Tex.Civ.App.—Waco 1971. Removal of two abscessed teeth and restoration of six other teeth to prevent further deterioration were properly found to constitute "necessities" furnished to child, and father was properly held liable therefor, though he was under court order paying alimony and child support.—*Lawrence v. Cox*, 464 S.W.2d 674, writ dismissed w.o.j.—*Child S 113*.

Tex.Civ.App.—Waco 1946. The basis upon which the law gives wife the right to recover from husband reasonable attorney's fees incurred in instituting or defending divorce suit is that wife is entitled to protect her rights granted to her under the law, and such expenses incurred are classed as "necessities".—*McClanahan v. McClanahan*, 197 S.W.2d 581.—*Divorce 224*.

Tex.Civ.App.—Eastland 1958. Medical services, including nursing and other usual services rendered a person of unsound mind, are "necessities" for which law imposes an obligation or agreement on part of incompetent to pay to extent of benefits received and for which estate of incompetent is liable.—*Chandler v. Hendrick Memorial Hospital, Inc.*, 317 S.W.2d 248, ref. n.r.e.—*Mental H 250, 377*.

Va. 1922. The Sunday law (Code 1919, § 4570) should be construed in the light of the age in which we live, recognizing that there are things which the community regard as necessary that were not "necessities" when the statute was first enacted, and that, to escape the penalty pronounced by the statute, the labor performed must be of the class excepted thereby or recognized by the community as a necessity, and what is or is not a necessity is generally a question for the jury in criminal prosecutions.—*Pirkey Bros. v. Commonwealth*, 114 S.E. 764, 134 Va. 713, 29 A.L.R. 1290.—*Sunday 7*.

NECESSITIES OF CITY

Cal.App. 2 Dist. 1927. "Necessities of city" as provided for in ordinance include prohibition of

mortuaries from specified portions of city.—*In re Ruppe*, 252 P. 746, 80 Cal.App. 629.—*Zoning 80*.

NECESSITIES OF LIFE

Cal.App. 2 Dist. 1958. Payments required of defendant husband in divorce case were for "necessities of life" within meaning of that term as used in order restraining parties from transferring property except in due course of business or for necessities of life.—*Estes v. Estes*, 322 P.2d 238, 158 Cal. App.2d 94.—*Divorce 206*.

La.App. 3 Cir. 1994. Court abused its discretion in awarding wife postdivorce alimony based on standard of living to which she became accustomed during marriage; expenses for maintaining that standard of living were not for "necessities of life," within meaning of statute authorizing awards of postdivorce alimony. LSA-C.C. art. 112.—*Preis v. Preis*, 631 So.2d 1349, 1993-569 (La.App. 3 Cir. 2/2/94).—*Divorce 240(5)*.

Minn. 1956. In certain cases, expenses for legal assistance may constitute "necessities of life", for which poor relief payment may be made. M.S.A. § 261.15(4).—*Jenswold v. St. Louis County Welfare Bd.*, 76 N.W.2d 639, 247 Minn. 60.—*Social S 17*.

Tenn.Ct.App. 1996. Meaning of term "necessities of life" which grantees agree to provide grantors as consideration for deed has been long established by the common law and means food, drink, clothing, shelter, medical attention, and suitable place of residence, and extends to articles which would ordinarily be necessary and suitable, in view of the rank, position, fortune, earning capacity, and mode of living of the individual involved.—*Richards v. Taylor*, 926 S.W.2d 569, appeal denied.—*Deeds 96*.

Tex.Civ.App.—Texarkana 1972. The "necessities of life", within meaning of statute providing that each spouse has a duty to support his or her minor children, and that such support is for necessities, include food, clothing, shelter and medical attention. V.T.C.A., Family Code, § 4.02.—*Woodruff v. Woodruff*, 487 S.W.2d 791.—*Child S 100, 113*.

NECESSITOUS

Ill. 1945. The words "destitute" and "necessitous", as used in statute making it a misdemeanor for a person, without lawful excuse, to neglect to support his child under age of 18 years, in destitute or necessitous circumstances, are used in the sense that the child is without those things essential to its health, care and education. S.H.A. ch. 68, § 24.—*People v. Booth*, 61 N.E.2d 370, 390 Ill. 330.—*Child S 653*.

Kan.App. 2000. For purposes of statute criminalizing nonsupport of a child, terms destitute and "necessitous" mean virtually the same thing, which is needing the necessities of life, and the necessities of life cover not only primitive physical needs, things absolutely indispensable to human existence and decency, but those things also which are in fact necessary to the particular person having the right to demand support and maintenance. K.S.A.

21-3605.—*State v. Filor*, 13 P.3d 926, 28 Kan. App.2d 208.—Child S 653.

La. 1955. The word “necessitous” is defined as living in or characterized by poverty; needy; narrow; destitute; pinching; pinched; as in necessitous circumstances.—*State v. Breaux*, 79 So.2d 502, 227 La. 417.

N.H. 1935. Where plaintiffs were residents of state and were found to be “necessitous” persons, court was without discretion to require security for costs; “necessitous” being defined as indigent or pressed by poverty. Pub.Laws 1926, c. 341, § 3.—*St. Cyr v. Wills*, 178 A. 257, 87 N.H. 277.—Costs 130.

Tex.Crim.App. 1923. *Vernon’s Ann.Pen.Code* 1916, art. 640a, *Vernon’s Ann.P.C.* art. 602, making it a misdemeanor for any parent to “willfully” or “without justification” desert, neglect, or refuse to provide for the support and maintenance of his or her child or children, under the age of 16 years, in destitute or necessitous circumstances, is not so indefinitely framed and of such doubtful construction as to be inoperative, within the meaning of article 6(6), because, in the absence of any statutory definitions by authority of articles 9 and 10(7, 8), very definite and well-understood meanings may be ascribed to the terms “justification,” “justifiable,” “destitute,” and “necessitous,” as defined by common language.—*Ex parte Strong*, 252 S.W. 767, 95 Tex.Crim. 250.—Crim Law 13.1(2.5).

Tex.Crim.App. 1923. In *Vernon’s Ann.Penn. Code* 1916, art. 640a, *Vernon’s Ann.P.C.* art. 602, punishing any parent who willfully or without justification deserts a child under 16 years of age in destitute or necessitous circumstances, the term “without justification” is equivalent to “willfully,” and its omission would not invalidate the statute; the terms “destitute” and “necessitous” being also equivalent.—*Ex parte Strong*, 252 S.W. 767, 95 Tex.Crim. 250.—Child S 653.

Va. 1938. Under statute requiring persons over 16 years of age to provide for support of parent in destitute or necessitous circumstances, the parent’s being in destitute or necessitous circumstances is essential to parent’s right to support, “destitute” meaning not possessing the necessities of life, in a condition of extreme want without possessions or resources, “necessitous” meaning living in or characterized by poverty. Code 1936, § 1944a.—*Mitchell-Powers Hardware Co. v. Eaton*, 198 S.E. 496, 171 Va. 255.—Parent & C 4.

NECESSITOUS AND COMPELLING

Pa.Super. 1959. Where automobile polisher had been receiving 45% of \$11.50, the charge for washing and waxing an automobile with white sidewall tires, and with the introduction of the 1958 models the employer decided to polish the automobiles instead of waxing them and this resulted in lowering of charge to \$7.50 per automobile, of which plaintiff would receive 45%, and polisher voluntarily terminated his employment two days after the change because he believed he would receive less money, the termination was not because of some “necessi-

tous and compelling” cause, and consequently polisher was ineligible for unemployment compensation. 43 P.S. § 802(b).—*Harne v. Unemployment Compensation Bd. of Review*, 149 A.2d 139, 188 Pa.Super. 525.—Social S 414.

Pa.Cmwlth. 1997. Unemployment compensation claimant who quit his job after employer refused to allow him a few hours to take care of his military reserve obligations had “necessitous and compelling” reason to terminate his employment, and, thus, was entitled to benefits, where claimant had been unable to report to new reserve unit as ordered due to delays arising out of his employment which made him miss military drills, and had explained to employer that he needed a few hours to report to military unit or he would held as absent without leave. 43 P.S. § 802(b).—*Livingston v. Unemployment Compensation Bd. of Review*, 702 A.2d 20.—Social S 402.

Pa.Cmwlth. 1983. Inability of a parent to care for children may constitute “necessitous and compelling” cause for leaving work within meaning of Unemployment Compensation Law. 43 P.S. § 802(b)(1).—*Blakely v. Com.*, Unemployment Compensation Bd. of Review, 464 A.2d 695, 76 Pa.Cmwlth. 628.—Social S 403.

Pa.Cmwlth. 1980. An unemployment compensation benefits claimant who has voluntarily terminated his or her employment bears the burden of proving a necessitous and compelling cause; receipt and acceptance of a firm offer of employment does constitute termination for cause of a “necessitous and compelling” nature. 43 P.S. § 802(b)(1).—*Antonoff v. Com.*, Unemployment Compensation Bd. of Review, 420 A.2d 800, 54 Pa.Cmwlth. 239.—Social S 410, 565.

Pa.Cmwlth. 1980. A key element in proving “necessitous and compelling” cause for terminating employment under statute governing ineligibility for unemployment compensation is the presence of good faith; “good faith” requires positive conduct consistent with a genuine desire to work by the one seeking unemployment compensation. 43 P.S. § 802(b)(1).—*Frable v. Com.*, Unemployment Compensation Bd. of Review, 416 A.2d 1164, 53 Pa.Cmwlth. 137.—Social S 402.

NECESSITOUS AND COMPELLING CAUSE

Pa. 1985. Claimant for unemployment compensation benefits who resigned position as court employee to continue her candidacy for public office did not have “necessitous and compelling cause” for leaving work under 43 P.S. § 802 and was ineligible for unemployment compensation benefits, even though administrative directive of Supreme Court proscribed court employees from engaging in partisan political activity, where nothing in Supreme Court’s directive produced pressure for claimant to terminate her employment but, rather, it was claimant’s desire to act in way that was in conflict with Court’s lawful directive which caused claimant to resign from her position. (Per Flaherty, J., with one Justice concurring and three Justices concurring in result).—*Snyder v. Com.*, Unemployment Compen-

sation Bd. of Review, 502 A.2d 1232, 509 Pa. 438.—Social S 402.

Pa.Cmwlt. 1999. Harassment can constitute "necessitous and compelling cause" to leave one's employment for purposes of statute providing that employee is ineligible for unemployment benefits for any week in which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. 43 P.S. § 802(b).—Comitalo v. Unemployment Compensation Bd. of Review, 737 A.2d 342.—Social S 415.

Pa.Cmwlt. 1999. Sexual harassment can constitute a "necessitous and compelling cause" for leaving employment for purposes of statute providing that claimant is ineligible for unemployment compensation for any week in which unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. 43 P.S. § 802(b).—Johnson v. Unemployment Compensation Bd. of Review, 725 A.2d 212.—Social S 415.

Pa.Cmwlt. 1995. Employee who voluntarily terminates employment has burden of proving that voluntary quit was for necessitous and compelling reason, for purposes of unemployment compensation eligibility, and whether employee had such cause is a conclusion of law subject to appellate review; "necessitous and compelling cause" is one that results from circumstances which produce pressure to terminate employment that is both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner. 43 P.S. § 802(b).—Old Forge Bank v. Unemployment Compensation Bd. of Review, 666 A.2d 761.—Social S 565, 614, 672.

Pa.Cmwlt. 1991. "Necessitous and compelling cause" did not exist for unemployment compensation claimant's voluntary termination of employment, though claimant had been diagnosed as suffering from respiratory problem and advised to move to warmer climate, where there was no indication from record that claimant's health would be impaired before onset of cold weather and claimant precipitously left employment, without notifying employer of reason, in mid-August. 43 P.S. § 802(b).—Tyler v. Unemployment Compensation Bd. of Review, 591 A.2d 1164, 139 Pa.Cmwlt. 598.—Social S 404.

Pa.Cmwlt. 1982. Substantial reduction in pay can constitute "necessitous and compelling cause" for voluntarily terminating one's employment within meaning of Unemployment Compensation Law. 43 P.S. § 802(b)(1).—John Kenneth, Ltd. v. Com., Unemployment Compensation Bd. of Review, 444 A.2d 824, 66 Pa.Cmwlt. 377.—Social S 414.

Pa.Cmwlt. 1980. Mere possibility of obtaining another job, without a firm offer of employment, was insufficient to constitute "necessitous and compelling cause" for termination of claimant's employment, and, thus, she did not qualify for unemployment compensation benefits. 43 P.S. § 802(b)(1).—O'Connor v. Com., Unemployment Compensation Bd. of Review, 413 A.2d 458, 50 Pa.Cmwlt. 573.—Social S 410.

Pa.Cmwlt. 1979. Unemployment compensation claimant's mere dissatisfaction with working conditions is not "necessitous and compelling cause" for voluntarily leaving employment.—Mann v. Com., Unemployment Compensation Bd. of Review, 398 A.2d 743, 41 Pa.Cmwlt. 119.—Social S 415.

NECESSITOUS AND COMPELLING CAUSE FOR VOLUNTARILY LEAVING EMPLOYMENT

Pa.Cmwlt. 1993. "Necessitous and compelling cause for voluntarily leaving employment," for purposes of preservation of right to unemployment compensation after voluntary termination of employment, arises when circumstances produce pressure to terminate employment that is both real and substantial, and which would compel reasonable person under circumstances to act in same manner. 43 P.S. § 802(b).—D'Andrea Wine & Liquor Imports v. Unemployment Compensation Bd. of Review, 636 A.2d 279, 161 Pa.Cmwlt. 149.—Social S 401.

NECESSITOUS AND COMPELLING NATURE

Pa. 1960. Where employee lived 60 miles away from the job and his wife was ill and there were four children of tender age requiring his attention and care, there were reasons of "necessitous and compelling nature" for the employee to leave his job and he was entitled to unemployment benefits. 43 P.S. § 802(b).—Pittsburgh Pipe & Coupling Co. v. Unemployment Compensation Bd. of Review, 165 A.2d 374, 401 Pa. 501.—Social S 403.

Pa.Super. 1963. Choosing to pursue education rather than federal employment was not reason of "necessitous and compelling nature" entitling former federal employee to unemployment compensation benefits. 43 P.S. § 802(b) (1).—Zook v. Unemployment Compensation Bd. of Review, 188 A.2d 783, 200 Pa.Super. 414.—Social S 410.

Pa.Super. 1961. Where claimant originally left employment because of surgery and obtained a sick leave and despite release by her physician wrote employer terminating her employment because of physical disability, and subsequently never contacted the employer, her unsupported statement as to her physical condition was insufficient to show cause of "necessitous and compelling nature" for her voluntary termination so as to justify unemployment compensation benefits. 43 P.S. § 802(b) (1).—Nicholson v. Unemployment Compensation Bd. of Review, 176 A.2d 181, 196 Pa.Super. 600.—Social S 584.25.

Pa.Super. 1961. Voluntary termination of employment solely because of dissatisfaction with a change in shift does not constitute cause of "necessitous and compelling nature" entitling the claimant to unemployment compensation. 43 P.S. § 802(b) (1).—Cook v. Unemployment Compensation Bd. of Review, 169 A.2d 594, 194 Pa.Super. 652.—Social S 416.

Pa.Super. 1959. Claimant who voluntarily quit his employment because of refusal of the employer to increase his wages did so without cause of a "necessitous and compelling nature" and was not

entitled to unemployment compensation. 43 P.S. § 802(b).—*Barittisky v. Unemployment Compensation Bd. of Review*, 151 A.2d 874, 189 Pa.Super. 473.—Social S 414.

Pa.Cmwth. 1997. For unemployment compensation purposes, cause to voluntarily terminate employment is of “necessitous and compelling nature” when there are real and substantial circumstances that force one to terminate employment and would compel reasonable person under those circumstances to act in same manner. 43 P.S. § 802(b).—*Livingston v. Unemployment Compensation Bd. of Review*, 702 A.2d 20.—Social S 402.

Pa.Cmwth. 1994. Cause for voluntarily leaving employment of “necessitous and compelling nature,” so as to not disqualify claimant from receiving unemployment compensation benefits, is one that results from circumstances producing pressure to terminate employment which is both real and substantial and which would compel reasonable person under circumstances to act in the same manner. 43 P.S. § 802(b).—*Ridley School Dist. v. Unemployment Compensation Bd. of Review*, 637 A.2d 749, 161 Pa.Cmwth. 573, appeal denied 644 A.2d 1204, 537 Pa. 669.—Social S 402.

Pa.Cmwth. 1994. Cause of “necessitous and compelling nature,” sufficient to allow for payment of unemployment compensation after voluntary termination of employment, is cause which results from overpowering circumstances producing both real and substantial pressure to terminate employment, and which would compel reasonable person to terminate. 43 P.S. § 802(b).—*Lee Hosp. v. Unemployment Compensation Bd. of Review*, 637 A.2d 695, 161 Pa.Cmwth. 464.—Social S 402.

Pa.Cmwth. 1983. Employer who ordered claimant to additional work without compensation gave unemployment compensation claimant cause of “necessitous and compelling nature” to terminate his employment within meaning of Unemployment Compensation Act. 43 P.S. § 802(b).—*Solomon v. Com., Unemployment Compensation Bd. of Review*, 461 A.2d 1349, 75 Pa.Cmwth. 400.—Social S 415.

Pa.Cmwth. 1982. Unjustified demotion which caused claimant to resign voluntarily from her position with hospital as a blood bank supervisor constituted “cause” of a “necessitous and compelling nature” and, as such, qualified claimant for unemployment benefits. 43 P.S. § 802(b)(1).—*Frankford Hospital v. Com., Unemployment Compensation Bd. of Review*, 445 A.2d 256, 66 Pa.Cmwth. 452.—Social S 415.

Pa.Cmwth. 1980. Racial discrimination may be a cause of “necessitous and compelling nature” for terminating one’s employment without disqualifying oneself for unemployment compensation benefits. 43 P.S. § 802(b)(1).—*Watts v. Com., Unemployment Compensation Bd. of Review*, 410 A.2d 976, 49 Pa.Cmwth. 279.—Social S 415.

NECESSITOUS AND COMPELLING REASON

Pa. 1997. For unemployment compensation purposes, existence of “necessitous and compelling reason” to voluntarily terminate one’s employment after being demoted depends solely upon whether demotion was justified; claimant does not have necessary and compelling reasons to voluntarily terminate his employment if demotion was justified because change in job duties and remuneration was result of claimant’s fault. 43 P.S. § 802(b).—*Allegheny Valley School v. Pennsylvania Unemployment Compensation Bd. of Review*, 697 A.2d 243, 548 Pa. 355.—Social S 415.

Pa.Super. 1953. Desire of stenographer to work in a small office furnished no “necessitous and compelling reason” for stenographer’s refusal to take proffered employment as stenographer in a large office within meaning of provision of Unemployment Compensation Law that an employee shall be ineligible for compensation for any week in which his employment is due to failure, without good cause, to accept suitable work. 43 P.S. § 802.—*Boyland v. Unemployment Compensation Bd. of Review*, 100 A.2d 129, 174 Pa.Super. 164.—Social S 500.

Pa.Cmwth. 1999. Claimant, who voluntarily terminated her employment because of child care problems, had “necessitous and compelling reason” for terminating her employment, such that she was entitled to unemployment benefits; employer made it clear that claimant’s parental obligations were secondary to her employment, and she demonstrated earnest effort to overcome employment obstacles placed upon her by her domestic responsibilities, but found it impossible to do so. 43 P.S. § 802(b).—*Ganter v. Unemployment Compensation Bd. of Review*, 723 A.2d 272.—Social S 403.

Pa.Cmwth. 1993. To meet burden of proving that termination was for “necessitous and compelling reason,” unemployment compensation claimant whose unemployment is due to voluntary termination must show that cause of necessitous and compelling nature resulted from circumstances which produced real and substantial pressure to terminate employment and which would compel reasonable person under like circumstances to act in same manner. 43 P.S. § 802(b).—*Carter v. Unemployment Compensation Bd. of Review*, 629 A.2d 212, 157 Pa.Cmwth. 133.—Social S 402.

Pa.Cmwth. 1990. Employer is entitled to modify employment specifications with regard to time, place and manner, and as long as employer acts reasonably and in good faith, such modifications will not constitute a “necessitous and compelling reason” for employee’s resignation for employment compensation purposes.—*Radnor Tp. School Dist. v. Unemployment Compensation Bd. of Review*, 580 A.2d 934, 135 Pa.Cmwth. 406.—Social S 415, 416.

Pa.Cmwth. 1989. Compensation claimant whose unemployment is due to voluntary termination bears burden of proving such termination was for “necessitous and compelling reason”; that is, circumstances which place real and substantial

pressure on employee to terminate employment and which would cause reasonable person under like circumstances to do the same. 43 P.S. § 802(b).—*Uniontown Newspapers, Inc. v. Com., Unemployment Compensation Bd. of Review*, 558 A.2d 627, 126 Pa.Cmwlt. 102.—Social S 402, 565.

Pa.Cmwlt. 1984. Unemployment Compensation Board of Review's determination that claimant's resignation was not for a cause of "necessitous and compelling reason," based on finding that claimant had not shown that climate in North Carolina, where he had moved, was warmer than climate in Central Pennsylvania, where he had worked, or that his presence was needed in order to protect his North Carolina property from crime, did not constitute a capricious disregard of evidence, despite evidence presented by claimant that his wife was advised to move to warmer climate by her doctors and that claimant's presence was needed at North Carolina property because of high crime rate. 43 P.S. § 802(b)(1, 2) (Repealed).—*Taylor v. Com., Unemployment Compensation Bd. of Review*, 484 A.2d 844, 86 Pa.Cmwlt. 258.—Social S 584.25.

Pa.Cmwlt. 1983. The family obligation of joining a relocated spouse can in some instances constitute a "necessitous and compelling reason" to leave one's employment and justify an award of unemployment benefits. 43 P.S. § 802(b).—*Kleban v. Com., Unemployment Compensation Bd. of Review*, 459 A.2d 53, 73 Pa.Cmwlt. 540.—Social S 406.

NECESSITOUS AND COMPELLING REASON FOR TERMINATION

Pa.Cmwlt. 1980. Absent unjust accusations, abusive conduct and profane language, resentment of supervisor's reprimand did not constitute "necessitous and compelling reason for termination," and thus claimant was not entitled to unemployment compensation benefits following voluntary termination. 43 P.S. § 802(b)(1).—*Krieger v. Com., Unemployment Compensation Bd. of Review*, 415 A.2d 160, 52 Pa.Cmwlt. 103.—Social S 415.

Pa.Cmwlt. 1980. Where there was no imminent threat of termination of employment but only possibility of its future occurrence due to "unsatisfactory" job evaluation, resignation because of desire to keep such evaluation from becoming part of individual's file was not "necessitous and compelling reason for termination" justifying receipt of unemployment compensation benefits. 43 P.S. § 802(b)(1).—*Gackenbach v. Com., Unemployment Compensation Bd. of Review*, 414 A.2d 770, 51 Pa.Cmwlt. 475.—Social S 415.

NECESSITOUS AND COMPELLING REASONS

Pa.Cmwlt. 1997. For unemployment compensation purposes, "necessitous and compelling reasons" for leaving one's job must result from circumstances which produce pressure that is both real and substantial, and which would compel reasonable person under circumstances to act in same manner. 43 P.S. § 802(b).—*Warwick v. Unem-*

ployment Compensation Bd. of Review, 700 A.2d 594.—Social S 402.

Pa.Cmwlt. 1994. Substantial evidence, including employer's own exhibit and testimony indicating that unemployment compensation claimant, who was mildly retarded, suffered from powerful and disabling posttraumatic stress reaction to abusive treatment at work by co-workers, was sufficient to support referee's conclusion that claimant left work for "necessitous and compelling reasons," and thus, claimant was not disqualified from receiving unemployment benefits based on his voluntary termination of employment. 43 P.S. § 802(b).—*Ridley School Dist. v. Unemployment Compensation Bd. of Review*, 637 A.2d 749, 161 Pa.Cmwlt. 573, appeal denied 644 A.2d 1204, 537 Pa. 669.—Social S 584.20.

Pa.Cmwlt. 1978. Female claimants, who had been employed in store in rural area and who had terminated their employment due to belief that mere use of an armed guard would not adequately protect claimants from perpetrator of two murder-robberies in the area, had terminated their employment for "necessitous and compelling reasons" within meaning of statute providing that an employee shall be ineligible for unemployment compensation for any week in which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. 43 P.S. § 802(b)(1).—*Hoy v. Com., Unemployment Compensation Bd. of Review*, 391 A.2d 1144, 38 Pa. Cmwlt. 126.—Social S 402.

NECESSITOUS CIRCUMSTANCES

Del.Gen.Sess. 1937. Wife owning unencumbered estate worth \$23,000 held not in "destitute or necessitous circumstances" within statute so as to render husband who gave her and child \$20 a week and house to live in guilty of nonsupport, since one may not be considered as "destitute" or in "necessitous circumstances" if there remains a large amount of unexpended capital. Rev.Code 1915, § 3034.—*State v. Weldin*, 189 A. 586, 38 Del. 158, 8 W.W.Harr. 158.—Hus & W 304.

Kan.App. 1999. Where the facts warrant, a child is deemed to be in "necessitous circumstances," as element of criminal nonsupport of a child, if the child would have been in that condition had he or she not been provided for by someone else. K.S.A. 21-3605(a)(1).—*State v. Sokolaski*, 987 P.2d 1130, 26 Kan.App.2d 333.—Child S 653.

La. 1953. Where small earnings of wife were not sufficient to provide 17-year-old minor son with food, clothing, lodging and high school education without help from husband, son was in "necessitous circumstances" within statute dealing with intentional nonsupport by parent of minor child in necessitous circumstances. LSA-R.S. 14:74.—*State v. Woods*, 66 So.2d 315, 223 La. 496.—Child S 653.

La. 1951. Where wife died leaving community property worth \$3000 and separate estate worth \$6200 and husband was earning a salary of \$300 per month at time of wife's death, husband was not in "necessitous circumstances," within statute, enti-

ting a surviving husband to claim from succession of his wife marital fourth, on proof that his wife died rich and that he was left by her death in necessitous circumstances. LSA-C.C. art. 2382.—Succession of Schnitter, 56 So.2d 563, 220 La. 323.—Des & Dist 52(3).

La. 1949. Where wife's separate estate was worth approximately \$38,000 at time of her death, whereas surviving husband owned no property and had an income of only \$12 per week plus room and board, wife died "rich" and husband was in "necessitous circumstances" within meaning of code provision for marital portion to surviving spouse. LSA-C.C. art. 2382.—Malone v. Cannon, 41 So.2d 837, 215 La. 939.—Des & Dist 52(3).

La. 1949. Code provision for marital portion to surviving spouse where husband or wife dies "rich" leaving survivor in "necessitous circumstances" uses quoted terms relatively and they are to be applied in a comparative manner. LSA-C.C. art. 2382.—Malone v. Cannon, 41 So.2d 837, 215 La. 939.—Des & Dist 52(1).

La. 1941. Trial court, in granting wife divorce, did not abuse its discretion in refusing to grant her alimony on ground that she was in "necessitous circumstances" within meaning of statute, where she had a net income of between \$30 and \$40 per month, in addition to free living quarters, and husband earned only about \$143 per month, and his mother was at least partially, in not wholly, dependent on him for support. LSA-C.C. art. 160.—Abbott v. Abbott, 5 So.2d 504, 199 La. 65.—Divorce 235.

La. 1923. A wife of the negro race who dies leaving an estate worth approximately \$30,000 is "rich" within LSA-C.C. art. 2382, and her crippled husband 68 years old, owning merely a small house and lot worth about \$500, and able to earn a little money preaching for a congregation of about 25 members, and having a daughter 40 years old dependent on him, is entitled to one-fourth of his deceased wife's estate as a spouse in "necessitous circumstances."—Succession of Blackburn, 98 So. 43, 154 La. 618.—Des & Dist 52(3).

La. 1919. Whether a widow, claiming \$1,000 under Civ.Code, art. 3252 (LSA-C.C.), is left in "necessitous circumstances," within the meaning of that article, is to be determined by the condition existing at the moment of the death of her husband.—In re Coreil's Estate, 83 So. 13, 145 La. 788.—Ex & Ad 180.

La. 1891. The term "necessitous circumstances," used in LSA-C.C. § 2382, providing that when a husband dies rich, leaving a surviving wife in "necessitous circumstances," she shall be entitled to claim the marital portion, is used relatively to the fortune of the husband and the condition in which the wife was accustomed to live during the marriage.—Smith v. Smith, 10 So. 248, 43 La. Ann. 1140.—Des & Dist 52(1).

La.App. 2 Cir. 1970. Where value of property left by decedent was \$6,100 and value of separate property owned by surviving widow was \$3,200, plus

allowance or pension of \$75 per month, husband did not die "rich," and surviving widow was not in "necessitous circumstances," within statute entitling surviving spouse in necessitous circumstances to marital portion of decedent's estate, if decedent died rich, so as to entitle her to child's portion of husband's estate in usufruct. LSA-C.C. art. 2382.—Smitherman v. Smitherman, 240 So.2d 6.—Des & Dist 52(2).

La.App. 2 Cir. 1942. The words "rich" and "necessitous circumstances" as used in statute entitling surviving husband or wife in necessitous circumstances to a marital portion of the deceased's estate, if decedent died rich, are relative terms, and property which would make a person in one walk of life rich would be inadequate to supply the wants of one in another condition of life, and the same rule applies in determining whether or not a person is in necessitous circumstances. LSA-C.C. art. 2382.—Moore v. Succession of Moore, 7 So.2d 716.—Des & Dist 52(1).

La.App. 3 Cir. 1994. Spouse who is working full time for respectable salary and has no unusual expenses or obligations is not in "necessitous circumstances," such as would justify award of postdivorce alimony. LSA-C.C. art. 112.—Preis v. Preis, 631 So.2d 1349, 1993-569 (La.App. 3 Cir. 2/2/94).—Divorce 237.

La.App. 4 Cir. 1985. In order to convict parent of criminal neglect of family the state must prove that parent intentionally failed to support his child, that parent had financial means to provide support, and that child was in necessitous circumstances; "necessitous circumstances" means food, shelter, clothing, health, education, and comfort.—State v. Brooks, 465 So.2d 61.—Child S 653.

La.App. 4 Cir. 1974. Husband, who earned \$9,000 annually but who had assets of only \$2,500 at death of wife who left \$162,000 was comparatively in "necessitous circumstances" within marital portion law. LSA-C.C. art. 2382.—Succession of Thumfart, 289 So.2d 850.—Des & Dist 52(1).

La.App. 4 Cir. 1973. Where husband at his death owned a house and lot worth \$15,000 and had a bank account in the amount of \$6,116.94, and where surviving spouse had no real or personal property, had had to seek charitable aid from a neighbor and had only job as a maid earning \$30 per week plus a few extra dollars from occasional baby-sitting, such husband died "rich" and the surviving spouse was in "necessitous circumstances" within meaning of statute providing for a marital portion to surviving spouse if either husband or wife die rich and leave the survivor in necessitous circumstances. LSA-C.C. art. 2382.—Succession of Harris, 283 So.2d 325.—Des & Dist 52(2).

Pa.Super. 1961. Under the statute disqualifying an employee for unemployment compensation for any week in which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature "good cause" means pressure of real, substantial and reasonable circumstances, compelling the employee's decision to terminate his employment and the termination of

employment relationship must be compelled by "necessitous circumstances". 43 P.S. § 802(b) (1).—Cook v. Unemployment Compensation Bd. of Review, 169 A.2d 594, 194 Pa.Super. 652.—Social S 402.

Pa.Super. 1961. Mere dissatisfaction of unemployment compensation claimant with his working conditions does not constitute "necessitous circumstances" compelling claimant voluntarily to terminate his employment and to recover unemployment compensation. 43 P.S. § 802(b) (1).—Cook v. Unemployment Compensation Bd. of Review, 169 A.2d 594, 194 Pa.Super. 652.—Social S 415.

NECESSITOUS DEBTOR

C.A.9 (Idaho) 1981. Idaho usury cases place great importance on whether person involved was necessitous debtor, and businessman who apparently wanted money to make large profit on ranch was not "necessitous debtor" within such concept and, accordingly, agreement would be interpreted as it was drafted, as land exchange agreement with option to repurchase, to which contract usury was not applicable. I.C. § 28-22-105.—Stoddard v. Stoddard, 641 F.2d 812.—Usury 31.

Idaho 1967. Where finance company which was assignee of seller under conditional sale contracts agreed to forbear collecting amount due for an additional 25 months and added to unpaid balance a sum constituting add-on-interest computed at six percent per annum on the unpaid balance, the buyer who had defaulted on the contract had become "necessitous debtor" for whose protection the usury statute was enacted so that extension agreement, which was a forbearance extended for 25 months and not the 58 months for which consecutive monthly installments were due after granting of the extension, was usurious. I.C. §§ 27-1905, 27-1907.—Petersen v. Philco Finance Corp., 428 P.2d 961, 91 Idaho 644.—Usury 65.

NECESSITOUS OR COMPELLING CAUSE

Pa.Super. 1962. That unemployment compensation claimant left her job as house mother at home for children because pay was not sufficient for her needs was not "necessitous or compelling cause" entitling her to compensation. 43 P.S. § 802(b) (1).—Biczak v. Unemployment Compensation Bd. of Review, 186 A.2d 432, 200 Pa.Super. 135.—Social S 414.

NECESSITOUS WANT

Ind.App. 1998. Decedent's parents were not "dependent next of kin" within meaning of wrongful death statute, and thus could not recover damages for pecuniary loss suffered as result of death; decedent's services for pay to two family businesses, which were partially owned by decedent, did not constitute support of parents, and parents did not show they were in condition of "necessitous want" of support given that their income increased in year following decedent's death. West's A.I.C. 34-1-1-2.—Estate of Miller v. City of Hammond, 691 N.E.2d 1310, transfer denied 706 N.E.2d 166.—Death 85.

NECESSITY

U.S.Pa. 1964. Within the contemplation of statute providing that no taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of taxpayer's books shall be made for each taxable year unless taxpayer requests otherwise or Secretary or delegate, after investigation, notifies taxpayer that additional inspection is necessary, "necessity" is not to be equated with probable cause or any like notion. 26 U.S.C.A. (I.R.C.1954) § 7605(b).—U.S. v. Powell, 85 S.Ct. 248, 379 U.S. 48, 13 L.Ed.2d 112.—Int Rev 4503.

N.M.Ct.Crim.App. 1997. "Necessity" for expert assistance at Government expense requires showing of why expert assistance is needed, what expert assistance would accomplish for accused, and why defense counsel is unable to gather and present evidence that expert assistant would be able to develop. R.C.M. 703(d).—U.S. v. Anderson, 47 M.J. 576, review granted 49 M.J. 33, new trial denied 52 M.J. 361, affirmed 50 M.J. 447, certiorari denied 120 S.Ct. 597, 528 U.S. 1054, 145 L.Ed.2d 496.—Mil Jus 1210.1.

C.A.6 1976. Those actions within the sphere of regulated activity which are found to meet a public demand may be regarded as satisfying the necessity portion of public convenience and necessity standard; "necessity" does not mean absolutely necessary or indispensable. Interstate Commerce Act, § 1 et seq., 49 U.S.C.A. § 1 et seq.—O-J Transport Co. v. U.S., 536 F.2d 126, certiorari denied 97 S.Ct. 386, 429 U.S. 960, 50 L.Ed.2d 328.—Carr 8.

C.A.9 (Ariz.) 1983. "Necessity" is defense one pleads when circumstances force one to perform criminal act while duress, or coercion, applies when human beings force one to act.—U.S. v. Nolan, 700 F.2d 479, certiorari denied 103 S.Ct. 3095, 462 U.S. 1123, 77 L.Ed.2d 1354.—Crim Law 38.

C.A.7 (Ill.) 1995. To qualify for defense of "necessity," to be relieved from liability for wrongful act under Illinois law, defendant must demonstrate that threat of injury which defendant sought to avert was imminent.—Russ v. U.S., 62 F.3d 201.—Torts 16.

C.A.7 (Ill.) 1969. "Necessity" in sense required by rule requiring railroads to keep right-of-way clear of unnecessary obstructions near crossings does not demand that the obstruction be the sine qua non of continued operation of the railroad, and the object need only perform some useful and meaningful function contributing to the workings of the railroad, provided that location of the obstruction at particular place is not only by virtue of convenience.—Rucker v. Wabash R. Co., 418 F.2d 146.—R R 109.

C.A.5 (Tex.) 1993. In order to prove "necessity," to satisfy confrontation clause requirements, a showing of unavailability is required for hearsay such as confessions. U.S.C.A. Const.Amend. 6.—U.S. v. Flores, 985 F.2d 770, rehearing denied 1 F.3d 1239, appeal after remand 40 F.3d 385, denial of post-conviction relief affirmed 135 F.3d 1000, rehearing denied, certiorari denied 119 S.Ct. 846,

525 U.S. 1091, 142 L.Ed.2d 700, rehearing denied 119 S.Ct. 1135, 525 U.S. 1188, 143 L.Ed.2d 128.—Crim Law 662.9.

C.C.A.3 (Pa.) 1947. "Necessity" is the quality or state of being necessary, unavoidable, or absolutely requisite; inevitableness; indispensableness.—Chadwick v. Stokes, 162 F.2d 132, 172 A.L.R. 405.

D.Colo. 2000. "Necessity" requirement for obtaining wiretap authorization is demonstrated where normal investigative techniques employing normal amount of resources have failed to make case within reasonable period of time. 18 U.S.C.A. § 2518(1)(c), (3)(c).—U.S. v. Carrillo, 123 F.Supp.2d 1223, appeal dismissed U.S. v. Olivas, 43 Fed.Appx. 226.—Tel 516.

D.Colo. 1970. "Necessity," within meaning of requirement for issuance of certificate to railroad for extension of trackage, that public convenience and necessity require services of another carrier, means substantial need for present or future service which is not or cannot be adequately supplied by existing carriers or facilities. Interstate Commerce Act, § 1(18), 49 U.S.C.A. § 1(18).—Denver & R. G. W. R. Co. v. U. S., 312 F.Supp. 329, affirmed Southern Pacific Transportation Co. v. U.S., 91 S.Ct. 188, 400 U.S. 921, 27 L.Ed.2d 182.—Commerce 85.6.

D.Hawai'i 1996. Term "necessity," for purposes of rule that double jeopardy clause permits retrial following declaration of mistrial caused by manifest necessity, cannot be interpreted literally, but rather, courts are to assume there are degrees of necessity; there must be high degree of necessity in order to justify declaration of mistrial without defendant's consent. U.S.C.A. Const.Amend. 5.—U.S. v. Kanahele, 951 F.Supp. 928.—Double J 99.

D.Mass. 1950. Under the Interstate Commerce Act providing for issuance of certificate of public convenience and "necessity," quoted word must not be taken too literally or as implying that a transportation crisis of major proportions would ensue unless an application is granted. Interstate Commerce Act, Sec. 207, 49 U.S.C.A. 307.—C. E. Hall & Sons v. U. S., 88 F.Supp. 596.—Commerce 85(2).

E.D.Mich. 2001. Under Michigan law, the difference between the defenses of "duress" and "necessity" is that the source of compulsion for duress is the threatened conduct of another human being, while the source of compulsion for necessity is the presence of natural physical forces.—Lakin v. Stine, 151 F.Supp.2d 824.—Crim Law 38.

S.D.N.Y. 1981. "Duress" and "coercion" refer to situations where the defendant performs the putative illegal conduct at the express will of another person, whereas "necessity" refers to a case where forces beyond the defendant's control render the unlawful conduct the lesser of two evils.—U.S. v. Wyler, 526 F.Supp. 76, affirmed 697 F.2d 301, certiorari denied 103 S.Ct. 145, 459 U.S. 865, 74 L.Ed.2d 122.—Crim Law 38.

S.D.N.Y. 1948. Inadequacy of existing facilities is a basic ingredient in determination of public "necessity" justifying issuance of a certificate of

public convenience and necessity to a motor carrier engaged in transportation of passengers by motor bus. Interstate Commerce Act, § 206, 49 U.S.C.A. § 306.—Hudson Transit Lines v. U.S., 82 F.Supp. 153, affirmed Adirondack Transit Lines Inc. v. Hudson Transit Lines Inc., 70 S.Ct. 59, 338 U.S. 802, 94 L.Ed. 485, affirmed 70 S.Ct. 59, 338 U.S. 802, 94 L.Ed. 485.—Commerce 85.27(2).

S.D.N.Y. 1932. Generally, where evidence has been given upon trial in criminal case, jury cannot be discharged before rendition of verdict, except in cases of "necessity" when plea of former jeopardy is unavailable.—U.S. v. Kraut, 2 F.Supp. 16.—Double J 99.

W.D.N.Y. 1994. Under New York law, court should weigh factors such as significance of the matter, weight of the testimony, and availability of other evidence when making determination of "necessity" of attorney's testimony for purposes of determining whether attorney's law firm should be disqualified on ground that attorney may be called as witness at trial.—Tisby v. Buffalo General Hosp., 157 F.R.D. 157.—Atty & C 22.

D.Utah 1997. "Necessity" requirement for issuance of wiretap does not require showing that every conceivable method of investigation was tried and failed or that other steps could have been taken.—U.S. v. Gutierrez-Santiman, 988 F.Supp. 1410.—Tel 516.

Bkrty.W.D.Mo. 1994. Even if Chapter 7 debtor were required to show necessity in order to subpoena mental health expert, debtor met "necessity" requirement, in adversary proceeding to determine dischargeability of debt; debtor claimed memory loss for relevant time periods involved in dispute, and contemporaneous psychological examination by state-employed expert, in connection with criminal proceeding, was perhaps only objective testimony of debtor's knowledge and state of mind during period in question. Fed.Rules Civ.Proc.Rules 30(b)(6), 45, 28 U.S.C.A.; Fed.Rules Bankr.Proc.Rule 7030, 11 U.S.C.A.—In re Cary, 167 B.R. 163.—Bankr 2124.1; Witn 5.

Bkrty.N.D.Okla. 1998. Gambling activities constitute a "luxury" rather than a "necessity," so that credit card advances obtained to engage in gambling can properly be characterized as "luxury" expenses, for debt dischargeability purposes. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A).—In re Herrig, 217 B.R. 891.—Bankr 3353(10).

Ala. 1976. Requirement of a showing of "necessity" for issuance of a certificate of public convenience and necessity for a motor carrier certificate means not that the service must be absolutely indispensable, but instead, means merely that the service must be reasonably necessary for the public good. Code of Ala., Tit. 48, § 301(9).—Southern Haulers, Inc. v. Alabama Public Service Commission, 331 So.2d 660.—Autos 83.

Ala. 1968. "Necessity" as term is used in statute under which certificate may be granted to motor carrier means reasonably necessary for public good. Code 1940, Tit. 48, § 301(9).—Service Exp., Inc. v.

Baggett Transp. Co., 207 So.2d 418, 281 Ala. 666.—Autos 83.

Ala. 1956. "Necessity" as used in the statute respecting the grant of a certificate of convenience and necessity does not mean essential or absolutely indispensable but merely that the certificate is reasonably necessary for the public good. Code 1940, Tit. 48, § 301(9).—*Railway Exp. Agency, Inc. v. Alabama Public Service Commission*, 91 So.2d 489, 265 Ala. 369.—Autos 83.

Ala. 1951. The word "necessity" as used in statutory provision that certificate of convenience and necessity to operate as a motor carrier of passengers should not be granted unless proposed service is or will be required by present or future convenience and necessity, means that certificate is reasonably necessary for public good. Code 1940, Tit. 48, § 301(9).—*Alabama Public Service Commission v. Higginbotham*, 56 So.2d 401, 256 Ala. 621.—Autos 83.

Ala. 1945. The word "necessity", within certificate of public convenience and necessity to operate as a common motor carrier of passengers, is not used in the sense of being essential or absolutely indispensable but merely that certificate is reasonably necessary for public good.—*Alabama Public Service Commission v. Crow*, 22 So.2d 721, 247 Ala. 120.—Autos 77.

Alaska 1980. "Hearsay" testimony which is not subject to recognized exception may be presented to grand jury only upon showing of "compelling justification"; for these purposes, "compelling" is to be equated with "necessity". Rules of Criminal Procedure, Rule 6(r).—*Castillo v. State*, 614 P.2d 756.—Ind & Inf 10.2(2).

Ariz. 1940. Under rule precluding restitution to one who confers benefit upon another without mistake, coercion, or request, unless such action was necessary for protection of interests of the other or of third persons, the "necessity" means an immediate and vital necessity, which will not permit delayed action, and does not include payment of inheritance taxes for benefit of an estate.—*Scoville v. Vail Inv. Co.*, 103 P.2d 662, 55 Ariz. 486.—Impl & C C 6.

Ariz.App.Div.2 1982. Contract for repair of truck used in minor's trucking business was not contract for "necessity" where minor was provided board, room, clothing, medical needs and education and where it was not necessary that he engage in business.—*Valencia v. White*, 654 P.2d 287, 134 Ariz. 139.—Infants 50.

Ark. 1945. The word "necessity" as used in connection with certificate of convenience and necessity to operate as motor carrier, is not used in sense of being essential or absolutely indispensable, but in sense that motor vehicle service would be such an improvement of existing mode of transportation as to justify or warrant expense of making the improvement.—*Santee v. Brady*, 189 S.W.2d 907, 209 Ark. 224.—Autos 83.

Ark. 1941. Evidence that city of Newport had convenient transportation service, that railroad op-

erated daily five trains between Newport and Little Rock, some of which stopped at intermediate points, and that bus company operated daily three busses each way between the cities, all of which stopped at intermediate points, showed that no "necessity" existed for additional passenger service, and hence order granting certificate of convenience and necessity to operate other busses between the cities was unauthorized. Pope's Dig. § 2023 et seq.—*Missouri Pac. R. Co. v. Williams*, 148 S.W.2d 644, 201 Ark. 895.—Autos 83.

Ark. 1941. That service rendered by railroad and bus line was not convenient to all persons along route between two cities was not a "necessity" within meaning of statute authorizing issuance of certificate of convenience and necessity for operation of vehicles for transportation of passengers and goods, which statute must be construed in its practical application to such service. Pope's Dig. § 2023 et seq.—*Missouri Pac. R. Co. v. Williams*, 148 S.W.2d 644, 201 Ark. 895.—Autos 83.

Ark. 1939. Beer is not a "necessity," within meaning of statute providing that charity or "necessity" may be shown in justification of violation of Sunday law. Pope's Dig. §§ 3421, 3422.—*McKeown v. State*, 124 S.W.2d 19, 197 Ark. 454.—Sunday 7.

Ark. 1926. Sale of gasoline is not such "necessity" as to be permissible on Sunday within meaning of Sunday restrictive laws.—*Rhodes v. City of Hope*, 286 S.W. 877, 171 Ark. 754, 47 A.L.R. 1104.—Sunday 7.

Ark. 1917. The term "necessity" means an economical and moral necessity, rather than an unavoidable physical necessity, and the qualifying word "daily" suggests requirement for a daily need; but the operation of a moving picture on Sunday is not a work of "daily necessity" within the statutory exception of Kirby's Dig. § 2030, forbidding labor on Sunday.—*Rosenbaum v. State*, 199 S.W. 388, 131 Ark. 251, L.R.A. 1918B,1109.

Ark. 1908. The word "necessity," in Kirby's Dig. § 2030, making it unlawful to work on Sunday except to perform "customary household duties of daily necessity, comfort, or charity," does not mean an absolute unavoidable physical necessity, but rather an economic and moral necessity.—*Barefield v. State*, 107 S.W. 393, 85 Ark. 134.—Sunday 7.

Ark. 1904. Courts, in construing the term "necessity" as used in statutes relating to the statute prohibiting work on the Sabbath excepting work of necessity, is given a liberal rather than a literal interpretation, and it is "not an absolute, unavoidable, physical necessity that is meant, but rather an economic and moral necessity." Where a belt in a mill employing 200 persons broke on a Saturday through an unexpected defect, and could not be repaired that day because gasoline could not be procured in a town of 3,000 inhabitants, the repairing of it Sunday morning, without which the mill would have to be shut down Monday, as, after the belt was glued, it had to dry 18 hours before it could be used, was a work of necessity, within the statute.—*State v. Collett*, 79 S.W. 791, 72 Ark. 167, 64 L.R.A. 204.

Cal. 1953. For purposes of public utility regulation, word "necessity" must be taken in a relative sense rather than in its lexicographical sense of "indispensably requisite." Public Utilities Code, §§ 730, 761-763.—*Southern Pac. Co. v. Public Utilities Commission*, 260 P.2d 70, 41 Cal.2d 354, appeal dismissed 74 S.Ct. 313, 346 U.S. 919, 98 L.Ed. 414.—Pub Ut 111.

Cal. 1861. Under the rule that property may be taken for the public "necessity," the word "necessity" is not to be used in too limited a sense; it means a want, an exigency, an expediency for the interest or safety of the state.—*Gilmer v. Lime Point*, 18 Cal. 229.

Cal.App. 1 Dist. 1926. "Necessity" is the quality or state of being necessary, in its primary sense signifying that which makes an act or event unavoidable.—*Spreckels v. City and County of San Francisco*, 244 P. 919, 76 Cal.App. 267.

Cal.App. 2 Dist. 1998. "Necessity" is affirmative public policy defense, in effect a plea in avoidance and justification, which comes into focus only after all elements of offense have been established.—*People v. Buena Vista Mines, Inc.*, 71 Cal.Rptr.2d 101, 60 Cal.App.4th 1198.—Crim Law 38.

Cal.App. 2 Dist. 1962. "Necessity" in condemnation proceedings does not mean an absolute but only a reasonable practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and property owner consistent with such benefit.—*Monterey County Flood Control and Water Conservation Dist. v. Hughes*, 20 Cal.Rptr. 252, 201 Cal.App.2d 197.—Em Dom 56.

Cal.App. 2 Dist. 1949. A "necessity" is that which is unavoidable, inevitable or indispensable.—*Wheeler v. Barker*, 208 P.2d 68, 92 Cal.App.2d 776.

Cal.App. 2 Dist. 1948. Under statute providing that husband may be required to pay money necessary to enable wife to prosecute or defend action, award cannot be made except upon finding of "necessity," which does not exist when services have already been rendered. Civ.Code, § 137.—*McClure v. Donovan*, 195 P.2d, 911, 86 Cal.App.2d 747.—Hus & W 205(6).

Cal.App. 4 Dist. 1999. Defense of "necessity" is founded upon public policy and provides a justification distinct from the elements required to prove the crime.—*Foster v. Snyder*, 90 Cal.Rptr.2d 207, 76 Cal.App.4th 264.—Crim Law 38.

Cal.App. 4 Dist. 1998. An instruction on the defense of "necessity" is required where there is evidence sufficient to establish that defendant violated the law (1) to prevent a significant evil, (2) with no adequate alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief in the necessity, (5) with such belief being objectively reasonable, and (6) under circumstances in which he did not substantially contribute to the emergency.—*In re Eichorn*, 81 Cal.Rptr.2d 535, 69 Cal.App.4th 382.—Crim Law 772(6).

Cal.App. 4 Dist. 1998. The defense of "necessity" is founded upon public policy and provides a justification distinct from the elements required to prove the crime; the situation presented to the defendant must be of an emergency nature, threatening physical harm, and lacking an alternative, legal course of action.—*In re Eichorn*, 81 Cal.Rptr.2d 535, 69 Cal.App.4th 382.—Crim Law 38.

Cal.App. 4 Dist. 1998. The "necessity" defense involves a determination that the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged.—*In re Eichorn*, 81 Cal.Rptr.2d 535, 69 Cal.App.4th 382.—Crim Law 38.

Cal.App. 4 Dist. 1998. "Necessity" does not negate any element of the crime, but represents a public policy decision not to punish such an individual despite proof of the crime.—*In re Eichorn*, 81 Cal.Rptr.2d 535, 69 Cal.App.4th 382.—Crim Law 38.

Cal.App. 4 Dist. 1998. An important factor of the "necessity" defense involves the balancing of the harm to be avoided as opposed to the costs of the criminal conduct.—*In re Eichorn*, 81 Cal.Rptr.2d 535, 69 Cal.App.4th 382.—Crim Law 38.

Cal.App. 4 Dist. 1998. The "necessity" defense does not negate the intent element of a crime because, unlike duress, the threatened harm is in the immediate future, which contemplates the defendant having time to balance alternative courses of conduct; the defendant has the time, however limited, to form the general intent required for the crime, although under some outside pressure.—*In re Eichorn*, 81 Cal.Rptr.2d 535, 69 Cal.App.4th 382.—Crim Law 38.

Cal.App. 4 Dist. 1998. Homeless defendant convicted of misdemeanor violation of city ordinance banning sleeping in designated public areas introduced sufficient evidence to present "necessity" defense to jury; there was substantial evidence that on night of violation every shelter bed within city that was available to homeless single man with no children was occupied, and that he was involuntarily homeless, i.e., he had done everything he could to alleviate his condition, but that due to circumstances beyond his control, defendant, who was 14-year resident of city, had been unable to find work as manual laborer that paid enough to allow him to find alternative place to sleep.—*In re Eichorn*, 81 Cal.Rptr.2d 535, 69 Cal.App.4th 382.—Crim Law 739(1).

Cal.App. 4 Dist. 1987. "Necessity" defense excuses criminal conduct if it is justified by need to avoid imminent peril and there is no time to resort to legal authorities or such resort would be futile.—*People v. Beach*, 240 Cal.Rptr. 50, 194 Cal.App.3d 955, review denied.—Crim Law 38.

Cal.App. 5 Dist. 1989. Defense of "necessity" involves determination that harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by law defining offense charged; situation presented to defendant must be of emergency nature, threatening physical harm,

and lacking alternative, legal course of action.—*People v. Heath*, 255 Cal.Rptr. 120, 207 Cal.App.3d 892, review denied.—Crim Law 38.

Fla. 1973. Word “necessity,” in determining public convenience and necessity, does not mean “absolute necessity” or “indispensable necessity,” but implies a “reasonable” necessity to meet needs occasioned by problem of transportation. F.S.A. § 323.05.—*Gulf Central Warehouse Center, Inc. v. Bevis*, 278 So.2d 595.—Carr 8.

Fla. 1970. “Necessity” within statute making proof of necessity a condition precedent to valid exercise of eminent domain power means a reasonable and not an absolute necessity; once such reasonable necessity is shown, exercise of the condemning authority’s discretion should not be disturbed in absence of bad faith or gross abuse of discretion. F.S.A. § 73.021 et seq.—*Canal Authority v. Miller*, 243 So.2d 131.—Em Dom 56.

Fla. 1960. Word “necessity” as used in statute relating to certificate of public convenience and “necessity” of a motor carrier does not mean an absolute and indispensable necessity, but rather that proposed service is reasonably necessary to meet the public needs.—*Greyhound Corp., Southeastern Greyhound Lines Division v. Carter*, 124 So.2d 9.—Autos 83.

Fla. 1930. “Necessity” in statute relating to certificate of necessity for motor transportation means reasonably necessary to meet public needs, not indispensable necessity (Acts 1929, c. 13700).—*Seaboard Air Line Ry. Co. v. Wells*, 130 So. 587, 100 Fla. 1027.—Autos 77.

Fla. 1926. That it is convenient and profitable to perform labor or transact business on Sunday does not render it “necessity.” That the fact that it is convenient and profitable to perform certain labor or transact certain business on Sunday does not render it “necessity” nor exsusive from the operation of law.—*Gillooley v. Vaughn*, 110 So. 653, 92 Fla. 943.—Sunday 7.

Fla. 1926. That it is convenient and profitable to perform labor or transact business on Sunday does not render it a “necessity.”—*Gillooley v. Vaughn*, 110 So. 653, 92 Fla. 943.—Sunday 7.

Fla.App. 1 Dist. 1989. “Necessity,” as used in common-law doctrine implying ways of necessity, means that no other reasonable mode of accessing the property exists without implying the easement, and fact that one means of access is more convenient than another does not make more convenient means a necessity. West’s F.S.A. § 704.01(1).—*Hunter v. Marquardt, Inc.*, 549 So.2d 1095, review denied 560 So.2d 234.—Ease 18(3).

Ga. 1999. Under the “necessity” exception to the hearsay rule, the “necessity” requirement is satisfied upon a showing that the declarant is deceased or unavailable, that the statement is relevant to a material fact, and that the statement is more probative than other evidence which may be offered. O.C.G.A. § 24-3-1(b).—*Azizi v. State*, 512 S.E.2d 622, 270 Ga. 709, reconsideration denied,

appeal after remand 553 S.E.2d 273, 274 Ga. 207.—Crim Law 419(5), 419(6).

Ga. 1999. State demonstrated “necessity” for introduction of murder victim’s hearsay statements to her sisters and lover to effect that she wanted separation from defendant, that their marriage was not working, that defendant abused her, and that defendant had threatened to kill victim if she separated from him; statements were relevant to show defendant’s intent, motive and bent of mind, and statements were more probative on those facts than evidence which could be procured elsewhere. O.C.G.A. § 24-3-1(b).—*Azizi v. State*, 512 S.E.2d 622, 270 Ga. 709, reconsideration denied, appeal after remand 553 S.E.2d 273, 274 Ga. 207.—Crim Law 419(6).

Ga. 1998. Testimony from three of victim’s friends that victim, portion of whose hidden money had been stolen, told each of them shortly before her death that she planned to meet with police officer to compare serial numbers on her remaining money with some money that officer had obtained, was admissible under “necessity” exception to hearsay rule in prosecution of officer for murdering and robbing victim; state was unable to locate any witnesses to identify officer as police officer seen at site at which murder occurred, and victim’s statement was reliable, as she was consistent in relating plan and purpose for meeting, she lacked motive to fabricate, and recovery of money was of great importance to her. O.C.G.A. § 24-3-1(b).—*Chapel v. State*, 510 S.E.2d 802, 270 Ga. 151.—Crim Law 419(6).

Ga. 1973. College education for divorced parties’ minor child was “necessity” and not mere luxury, and father was therefore properly required to provide for such education despite fact that funds might in part be expended after child’s majority.—*Fitts v. Fitts*, 202 S.E.2d 414, 231 Ga. 528.—Child S 119.

Ga. 1928. The word “necessity” within Penal Code § 416 prohibiting Sunday work or business except works of necessity or charity, is not physical and absolute necessity, but the moral fitness and propriety of the work done under the circumstances of each particular case.—*Williams v. State*, 144 S.E. 745, 167 Ga. 160, 60 A.L.R. 747, answer to certified question conformed to 145 S.E. 483, 38 Ga.App. 694.

Ga. 1900. “Necessity,” as used in the Georgia Constitution, Civ.Code, § 5729, declaring that in cases of necessity private ways may be granted on just compensation being paid, means that the way sought to be established must be absolutely indispensable to the applicant as a means of reaching his property; and, if there is in existence a way suitable for all the purposes for which the property is to be used, a case of necessity does not arise, though such way may be less convenient than the one proposed.—*Chattanooga, R. & S. R. Co. v. Philpot*, 37 S.E. 181, 112 Ga. 153.

Ga.App. 1998. There are two prerequisites for admission of hearsay because of necessity: (1) “necessity”, that is, unavailability, and (2) particular-

ized guarantees of trustworthiness. O.C.G.A. § 24-3-1(b).—*Atwater v. State*, 503 S.E.2d 919, 233 Ga.App. 339.—Crim Law 419(1).

Ga.App. 1994. State failed to show “necessity” to admit police officer’s hearsay testimony that alleged battery victim told officer some three and one-half hours after incident that defendant struck victim and beat her head against kitchen floor; statements were not *res gestae*, and victim’s absence from trial was unexplained. O.C.G.A. § 24-3-1(b).—*Wilbourne v. State*, 448 S.E.2d 37, 214 Ga.App. 371.—Crim Law 419(1.5), 419(5).

Ga.App. 1947. Lodging or dwelling for a family is “necessity”, for rent of which, wife may become individually liable by express contract.—*Williams v. Stark*, 44 S.E.2d 300, 75 Ga.App. 668.—Hus & W 83.

Ga.App. 1935. Lodging or dwelling for family is “necessity”, for rent of which wife may become individually liable by express contract.—*Butler v. Godley*, 181 S.E. 494, 51 Ga.App. 784.—Hus & W 151(6).

Hawai’i App. 1992. For purposes of statutory “necessity” or “choice of evils” defense, actor’s belief that his conduct is necessary means reasonable belief. HRS §§ 701-107(5, 7), 701-115(2)(a), 703-301, 703-302.—*State v. Kealoha*, 826 P.2d 884, 9 Haw.App. 115.—Crim Law 38.

Ill. 1954. When statute requires certificate of convenience and “necessity” for a carrier, word “necessity” is not always used in sense of indispensably requisite.—*Eagle Bus Lines v. Illinois Commerce Commission*, 119 N.E.2d 915, 3 Ill.2d 66.—Carr 8.

Ill. 1933. “Convenience” and “necessity” required to support order of commerce commission in respect of extension of street car line are those of public, not of individuals.—*O’Keefe v. Chicago Rys. Co.*, 188 N.E. 815, 354 Ill. 645.—Urb R R 3.

Ill. 1929. Commerce Commission, in passing on application for extension of bus line, should look to future as well as to present situation; ‘necessity and convenience.’ Though term ‘necessity and convenience’ in Public Utilities Act (Smith-Hurd Rev. St. 1927, c. 111 $\frac{2}{3}$) does not refer to convenience or necessity of operator of utility, nor is word “necessity” used in its lexicographical sense of indispensably requisite, Commerce Commission, in passing on application for extension of bus line, should look to future as well as to present situation, as necessity to be provided for is not only existing urgent need, but need to be expected in future, so far as may be anticipated from development of community, growth of industry, and increase in wealth and population.—*Campbell v. Illinois Commerce Commission*, 165 N.E. 790, 334 Ill. 293.—Autos 83.

Ill. 1923. “Necessity” defined. When the statute requires a certificate of public convenience and necessity as a prerequisite to the construction of a public utility, such as a railroad the word “necessity” is not used in its lexicographical sense of ‘indispensably requisite’; but an improvement of sufficient importance to warrant the expense of making

it, or a thing which is expedient, is a necessity, and inconvenience may be so great as to amount to necessity.—*Wabash, C. & W. Ry. Co. v. Commerce Commission*, 141 N.E. 212, 309 Ill. 412.—R R 7.

Ill. 1923. “Necessity” defined.—*Wabash, C. & W. Ry. Co. v. Commerce Commission*, 141 N.E. 212, 309 Ill. 412.—R R 7.

Ill.App. 1 Dist. 1998. Cellular telephone service is not a “necessity” allowing payment of allegedly improper claim of right for such services to be considered to have been made under duress, and thus, voluntary payment doctrine will operate to bar recovery of payment in action for breach of contract.—*Dreyfus v. Ameritech Mobile Communications, Inc.*, 233 Ill.Dec. 61, 700 N.E.2d 162, 298 Ill.App.3d 933, appeal denied 235 Ill.Dec. 941, 706 N.E.2d 496, 181 Ill.2d 569.—Paymt 87(2).

Ill.App. 1 Dist. 1995. Pollution Control Board’s decision that waste incineration facility was necessary was not contrary to manifest weight of evidence, despite claim that, absent revenues guaranteed by Retail Rate Law, incinerator would not be profitable and, thus, that there was no need for it to exist; there was no requirement that absolute necessity be shown, nor had profitability been held indispensable to finding of “necessity.” S.H.A. 220 ILCS 5/8-403.1; 415 ILCS 5/39.2.—*Turlek v. Pollution Control Bd.*, 210 Ill.Dec. 826, 653 N.E.2d 1288, 274 Ill.App.3d 244.—Environ Law 370.

Ill.App. 1 Dist. 1993. “Necessity” exists for taking, with respect to exercise of power of eminent domain, if taking is expedient, reasonably convenient or useful to public; term “necessity” is not limited to absolute physical necessity.—*Alsip Park Dist. v. D & M Partnership*, 192 Ill.Dec. 80, 625 N.E.2d 40, 252 Ill.App.3d 277, appeal denied 190 Ill.Dec. 882, 622 N.E.2d 1199, 152 Ill.2d 553.—Em Dom 56.

Ill.App. 1 Dist. 1991. Test of whether court should award costs for depositions is two pronged: deposition must be used at trial, and the deposition must be necessary; “necessity” is something that is condition or quality of being necessary, that is indispensable or needed to achieve certain result. S.H.A. ch. 110A, ¶ 208.—*Galowich v. Beech Aircraft Corp.*, 154 Ill.Dec. 46, 568 N.E.2d 46, 209 Ill.App.3d 128, appeal denied 162 Ill.Dec. 486, 580 N.E.2d 112, 141 Ill.2d 539.—Costs 193.

Ill.App. 1 Dist. 1987. While terms are sometime used interchangeably, compulsion and necessity are theoretically distinct defenses; “compulsion” implies complete deprivation of free will, i.e., absence of choice, whereas “necessity” involves choice between two or more admitted evils.—*People v. Bivens*, 108 Ill.Dec. 944, 509 N.E.2d 640, 156 Ill. App.3d 222.—Crim Law 38.

Ill.App. 2 Dist. 1967. “Necessity” as used in zoning ordinance allowing issuance of permit for special use upon a finding that there is a public necessity for the use must be read to mean expedient or reasonably convenient.—*Pioneer Trust and Sav. Bank v. McHenry County*, 232 N.E.2d 816, 89

Ill.App.2d 257, reversed 241 N.E.2d 454, 41 Ill.2d 77.—Zoning 378.1.

Ill.App. 3 Dist. 1988. "Necessity" justifies illegal conduct if that conduct was sole reasonable alternative available to defendant given circumstances of case; necessity involves choice between two admitted evils where other options are unavailable. S.H.A. ch. 38, ¶ 7-13.—*People v. Blake*, 119 Ill.Dec. 160, 522 N.E.2d 822, 168 Ill.App.3d 581, appeal denied 125 Ill.Dec. 223, 530 N.E.2d 251, 122 Ill.2d 580, appeal after remand 146 Ill.Dec. 853, 558 N.E.2d 1052, 199 Ill.App.3d 1075, appeal allowed 151 Ill.Dec. 386, 564 N.E.2d 841, 135 Ill.2d 559, reversed 162 Ill.Dec. 47, 579 N.E.2d 861, 144 Ill.2d 314, on remand 203 Ill.Dec. 871, 640 N.E.2d 1021, 222 Ill.App.3d 1108.—Crim Law 38.

Ill.App. 4 Dist. 1979. "Necessity" as a defense to a criminal charge requires that there be an alternative to an evil course and that the alternative be evil as well; where there is yet another alternative besides the two evil choices and such alternative, if carried out, will cause less harm, then a person is not justified in breaking the law. S.H.A. ch. 38, § 7-13.—*People v. White*, 34 Ill.Dec. 289, 397 N.E.2d 1246, 78 Ill.App.3d 979.—Crim Law 38.

Ill.App. 5 Dist. 1991. "Necessity" is affirmative defense which requires: that person claiming defense was without blame in occasioning or developing situation; and that person reasonably believed that his conduct was necessary to avoid greater public or private injury than which might reasonably have resulted from his conduct. S.H.A. ch. 38, ¶ 7-13.—*People v. Ferree*, 163 Ill.Dec. 545, 581 N.E.2d 699, 221 Ill.App.3d 212.—Crim Law 38.

Ill.App. 5 Dist. 1991. "Necessity," as defense to escape, involves choice that can only be made between two admitted evils, other options being unavailable.—*People v. Branham*, 160 Ill.Dec. 478, 577 N.E.2d 803, 217 Ill.App.3d 650, appeal denied 164 Ill.Dec. 920, 584 N.E.2d 132, 142 Ill.2d 656.—Escape 6.

Ill.App. 5 Dist. 1984. "Necessity," for purposes of condemnation, means simply that the State's acquisition of land is expedient, reasonably convenient, or useful to the public. S.H.A. ch. 110, ¶ 7-104.—*Department of Transp. v. Keller*, 82 Ill. Dec. 728, 469 N.E.2d 262, 127 Ill.App.3d 976.—Em Dom 56.

Ind. 1889. The word "necessity," as used in Rev.St. 1881, § 2000, prohibiting labor on Sunday, except works of necessity, is incapable of an accurate and comprehensive definition. The question in each case must be decided according to the circumstances, and it is therefore more a question of fact than of law whether the labor done in the particular case is to be deemed of necessity or not.—*Ungericht v. State*, 21 N.E. 1082, 119 Ind. 379, 12 Am.St. Rep. 419.

Ind.App. 1999. "Necessity" under Indiana's eminent domain statutes is not limited to the absolute or indispensable needs of the state, but is considered to be that which is reasonably proper and useful for the purpose sought. West's A.I.C.

8-23-2-6, 8-23-7-2.—*State v. Collom*, 720 N.E.2d 737.—Em Dom 56.

Iowa App. 1991. Test of right to intervene in termination of parental rights proceeding is "interest", not "necessity."—*In Interest of C.L.C.*, 479 N.W.2d 340.—Infants 200.

Kan. 1993. State made adequate showing of "necessity" for dismissing and refiling charges against defendant and, because its dismissing and refiling charges was not subterfuge to deny defendant right to speedy trial, relevant period for calculating whether his speedy trial rights were violated did not include days that elapsed after his arraignment on original complaint; necessity stemmed from rule that state may not appeal dismissal in criminal case of some counts of multicount complaint while remainder of counts remain pending in district court and have not been finally resolved. K.S.A. 22-3402(2).—*State v. Clovis*, 864 P.2d 687, 254 Kan. 168.—Crim Law 577.14.

Kan. 1971. "Public convenience" in statute providing that no public utility shall transact business until it shall have obtained certificate from corporation commission that public convenience will be promoted by transaction of said business does not necessarily mean that there must be a showing of absolute need; the word "necessity" means a public need without which the public is inconvenienced to the extent of being handicapped. K.S.A. 66-131.—*Central Kansas Power Co. v. State Corp. Commission*, 482 P.2d 1, 206 Kan. 670.—Pub Ut 113.

Kan. 1932. Word "necessity," as used in Laws 1925, c. 206, relating to certificate of convenience and necessity for operation of bus line, does not mean something indispensable or absolutely essential, but rather public need, without which public, people generally of the community, would be inconvenienced or handicapped to their detriment in the pursuit of business or wholesome pleasure, as compared with that enjoyed by others generally, similarly situated.—*Southern Kansas State Lines Co. v. Public Service Commission*, 11 P.2d 985, 135 Kan. 657.

Kan. 1930. "Necessity," as used in law relating to bus line, means public need without which public would be inconvenienced or handicapped. Laws 1925, c. 206.—*Atchison, T. & S.F. Ry. Co. v. Public Service Commission of Kansas*, 288 P. 755, 130 Kan. 777.—Autos 83.

Ky. 1954. Where minor, at the time he entered into contract with bailor for use of farm machinery, was supporting himself and his family by tilling the soil, such machinery was a "necessity" and minor could be held liable on the contract and for conversion of the property.—*Williams v. Buckler*, 264 S.W.2d 279.—Infants 50, 59.

Ky. 1948. Where public necessity existed for corporation to lay pipe line to transmit gas for public use, and corporation had no property of its own over which line could be laid, and for some distance the only alternative to laying it along defendants' bottom land was to lay it on hillside, which would be impractical because of danger of

slips and slides with their accompanying hazards, a practicable and reasonable "necessity" existed entitling corporation to condemn an easement over the bottom land.—*Petroleum Exploration v. Hensley*, 213 S.W.2d 262, 308 Ky. 103.—Em Dom 56.

Ky. 1944. The "necessity" for establishment of a passway over the property of another does not import absolute necessity but only a practical necessity, and when the latter type of necessity is proven the right of condemnation arises if other requisite facts are shown. KRS 381.580, 381.590.—*Mitchell v. Skidmore*, 181 S.W.2d 257, 297 Ky. 756.—Priv Roads 1.

Ky. 1924. Word "necessity" in Ky.St. § 1321, relating to works of necessity on Sunday, does not mean "a physical and absolute necessity," and question must be determined according to particular circumstances of each case, having regard also to changing conditions of civilization.—*Natural Gas Products Co. v. Thurman*, 265 S.W. 475, 205 Ky. 100.

Ky. 1916. Under Ky. St. § 1321, providing that no work or business shall be done on Sunday, except the ordinary household offices, or other work of necessity or charity, or work required in the maintenance or operation of a ferry, skiff, or steamboat, or steam or street railroads, and that if any person shall on that day be found at his own trade, or shall employ others in labor or other business, he shall be subject to a fine, defendant, a barber, who on Sunday opened his shop and aided by an employé, shaved and trimmed the hair of all persons requesting such service, and accepted the customary price, was subject to the penalty, since such work was not a work of "necessity," though the necessity which must exist to bring the doing of any work within the exception is not an absolute, unavoidable physical necessity, but depends on what the general public in its ordinary modes of doing business regards as necessary.—*Gray v. Com.*, 188 S.W. 354, 171 Ky. 269.

Ky. 1909. Where an operator of a mine maintaining a spur track from the mine to a railroad needed the land of another to reduce grades and curves in the track, and thereby eliminate dangers to operatives, and also needed the land of another for terminal facilities to avoid an extraordinary outlay, a "necessity" existed within Ky.St.1909, § 815, Russell's St. § 5352, authorizing the condemnation of such land as may be necessary for the spur tracks; a "necessity" within the statute being a convenience substantially advancing the public interest by making the road safer or better.—*Greasy Creek Mineral Co. v. Ely Jellico Coal Co.*, 116 S.W. 1189, 132 Ky. 692.—Em Dom 58.

Ky. 1908. The word "necessity," in connection with condemnation proceedings, does not mean an absolute, but only a reasonable, necessity such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and property owner consistent with such benefit, although it does not include the taking of land which may merely render the employment of the improvement more convenient or

less expensive or for a necessity which is merely colorable. The word "necessity," in such instance, must be construed to mean expedient, reasonably convenient, or useful to the public, and cannot be limited to the absolute physical necessity.—*Warden v. Madisonville H. & E.R. Co.*, 108 S.W. 880, 128 Ky. 563, 33 Ky.L.Rptr. 38.

La. 1930. Under statute authorizing Public Service Commission to grant certificate of "public convenience and "necessity" to motor carrier, the word "necessity" does not mean indispensable. Act No. 292 of 1926.—*Yazoo & M.V.R. Co. v. Louisiana Public Service Com'n*, 128 So. 39, 170 La. 441.—Autos 83.

La.App. 1 Cir. 1964. Purchase of automobile by estranged wife at time millworker husband was earning take home pay of \$73 weekly and paying wife sum of \$25 weekly and was in process of being adjudicated a bankrupt was not purchase of a "necessity" that would render husband liable for purchase price. LSA-C.C. art. 120.—*Hagedorn Motors, Inc. v. Godwin*, 170 So.2d 779.—Hus & W 268(4).

La.App. 3 Cir. 1997. Under the definition of "necessity," or "necessitas facit licitum quod alias non est licitum," as it relates to criminal culpability, a person is excused from criminal liability if he acts under a duress of circumstances to protect life or limb or health in a reasonable manner and with no other acceptable choice. LSA-R.S. 14:18.—*State v. Recard*, 704 So.2d 324, 1997-754 (La.App. 3 Cir. 11/26/97), writ denied 805 So.2d 200, 1997-3187 (La. 5/1/98).—Crim Law 38.

La.App. 4 Cir. 1984. "Necessity," when raised as a defense to the illegal possession of a firearm, entails proof that threat of force by another is imminent and apparent, and that the person threatened has no reasonable alternative but to possess the firearm. LSA-R.S. 14:18(7).—*State v. Jackson*, 452 So.2d 776.—Weap 4.

Me. 1925. Defendant held not entitled to claim a right of way of necessity over a strip of land to a highway, where her lot was not adjacent to strip and was bounded by ocean, and owner of strip was not her grantor, and she had access to highway without passing over strip; "necessity" meaning that there must exist an absolute physical impossibility of otherwise reaching alleged dominant estate.—*Littlefield v. Hubbard*, 128 A. 285, 124 Me. 299, 38 A.L.R. 1306.—Ease 18(6).

Md.App. 1985. Narrower defense of "necessity," i.e., that duress of circumstances compelled commission of crime, thus making offense excusable, is included within broader concept of self-defense.—*Crawford v. State*, 487 A.2d 1214, 61 Md.App. 620, certiorari granted 493 A.2d 351, 303 Md. 297, affirmed 521 A.2d 1193, 308 Md. 683.—Crim Law 38.

Mass. 1993. Defense of "necessity" is available only when (1) defendant is faced with clear and imminent danger, not one which is debatable or speculative; (2) defendant can reasonably expect that his or her action will be effective as direct cause of abating danger; (3) there is no legal

alternative which will be effective in abating danger; and (4) legislature has not acted to preclude defense by clear and deliberate choice regarding values at issue.—*Com. v. Leno*, 616 N.E.2d 453, 415 Mass. 835.—*Crim Law* 38.

Mass. 1993. Affidavit in support of application for wiretap alleging failure of countersurveillance, undercover operatives, and witnesses, the number of individuals and locations involved, and inability of informants to reach leaders of loansharking conspiracy satisfied statutory “necessity” requirement for wiretap authorization. *M.G.L.A. c. 272, § 99, subd. E, par. 3.*—*Com. v. Westerman*, 611 N.E.2d 215, 414 Mass. 688.—*Tel* 516.

Mass. 1988. Pursuant to regulation stating that if any sizeable portion of area is not “blighted open” its inclusion in urban renewal plan must be justified by necessity of achieving urban renewal objectives for total project area or necessity of bringing project area to sound boundary, “necessity” meant necessary for sound planning purposes rather than necessary because no feasible alternatives existed.—*Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence*, 531 N.E.2d 1233, 403 Mass. 531.—*Zoning* 381.5.

Mass. 1939. The “necessity” which will create an easement by implication is not an absolute physical necessity but is no more than a reasonable necessity.—*Supraner v. Citizens Sav. Bank*, 22 N.E.2d 38, 303 Mass. 460.—*Ease* 18(1).

Mass. 1926. A way by “necessity” is not limited to absolute physical necessity.—*Davis v. Sikes*, 151 N.E. 291, 254 Mass. 540.—*Ease* 18(1).

Mass. 1914. The “necessity” of an appurtenance for the beneficial use of leased premises, which will entitle the lessee thereto, is not an absolute necessity in the sense that it must be completely indispensable, but is a real necessity and not a mere convenience or advantage.—*Raynes v. Stevens*, 107 N.E. 398, 219 Mass. 556.

Mich. 1968. “Necessity” as used in section of Financial Institutions Act relating to necessity for organization of bank does not mean an absolute need, but merely a substantial or obvious need in view of disclosed relevant circumstances. *M.C.L.A. § 487.26.*—*Southgate Bank v. Slay*, 156 N.W.2d 562, 380 Mich. 282.—*Banks* 6.

Mich. 1956. Statute, providing that banking commissioner shall not permit establishment of branch banks unless satisfied as to “necessity” thereof, uses quoted word as meaning a substantial or obvious need in view of the disclosed relevant circumstances, and not an absolute or indispensable need or the imaginary need of whimsy, caprice, or mere convenience. *Comp.Laws 1948, §§ 487.1 et seq.*, 487.34.—*Wyandotte Sav. Bank v. Eveland*, 78 N.W.2d 612, 347 Mich. 33.—*Banks* 33.

Mich. 1954. In provision of Constitution that when private property is taken for use or benefit of public, necessity for taking shall be ascertained by jury, “necessity” does not mean indefinite, remote or speculative future necessity but means necessity existing now or in near future.—*Board of Ed. of*

City of Grand Rapids v. Baczewski, 65 N.W.2d 810, 340 Mich. 265.—*Em Dom* 198(2).

Mich. 1948. Under statute requiring Banking Commissioner to disapprove application for organization of new bank if not satisfied as to necessity thereof, “necessity” does not mean mere convenience, but means a substantial or obvious need justifying chartering of new bank in view of disclosed circumstances rather than absolute or indispensable or economic need. *Pub.Acts 1937, No. 341, §§ 21, 26.*—*Moran v. Nelson*, 33 N.W.2d 772, 322 Mich. 230.—*Banks* 6.

Mich. 1948. Where applicants of unquestioned responsibility and fitness applied for permission to charter new state bank in city of Detroit and showed increased population, substantial growth in banking and other business, that new bank would not affect solvency of existing banks, and that only six independent commercial banking institutions existed in the city, applicants established “economic need” and “necessity” sufficient to entitle them to charter under statute requiring Banking Commissioner to disapprove applications for organization of new bank if not satisfied as to “necessity” thereof. *Pub.Acts 1937, No. 341, §§ 21, 26.*—*Moran v. Nelson*, 33 N.W.2d 772, 322 Mich. 230.—*Banks* 6.

Mich. 1936. Minor’s land contract for purchase of house and lot was not for “necessity,” since father with whom minor resided had legal obligation to provide home, and hence contract could be rescinded.—*Lawrence v. Baxter*, 267 N.W. 742, 275 Mich. 587.—*Infants* 50.

Mich. 1916. *Pub.Acts 1913, No. 206*, authorizing the Railroad Commission to require physical connection of telephone lines when public convenience and necessity can thereby be subserved, does not require the public necessity to be peculiar to the particular case; for the existence of a public necessity in each particular case is not diminished by the existence of the same public necessity in all cases. Under *Pub.Acts 1913, No. 206*, providing for physical connection between telephone systems whenever public convenience and necessity can thereby be subserved, the public “necessity” spoken of is not an absolute necessity, but if there is a strong or urgent need of the connection in a particular case, there is necessity for it within the statute.—*Michigan State Telephone Co. v. Michigan Railroad Commission*, 161 N.W. 240, 193 Mich. 515.

Mich. 1880. “Necessity,” as used in *Comp.Laws, § 1984*, providing that no person shall do any manner of labor, business, or work on Sunday, except only works of necessity and charity, is not to be tested by mere convenience.—*Allen v. Duffy*, 4 N.W. 427, 43 Mich. 1, 38 *Am.Rep.* 159.

Mich.App. 1990. Words “public necessity” and “necessity” in Uniform Condemnation Procedures Act mean necessity now existing or which will exist in near future, not indefinite, remote, or speculative future necessity. *M.C.L.A. § 213.51 et seq.*—*City of Troy v. Barnard*, 455 N.W.2d 378, 183 Mich.App. 565, appeal denied.—*Em Dom* 56.

Minn. 1961. Term “necessity” as used in statute authorizing Railroad and Warehouse Commission to grant a motor carrier a certificate of public convenience and necessity, contemplates a definite public need for transportation service for which no reasonably adequate public service exists, and mere fact that a service might be convenient is not sufficient to meet statutory requirement of both public convenience and necessity. M.S.A. § 221.071.—*Monson Dray Line, Inc. v. Murphy Motor Freight Lines, Inc.*, 107 N.W.2d 850, 259 Minn. 382.—*Autos* 83.

Minn. 1941. The word “necessity” as used in statute authorizing issuance of certificate of public convenience and necessity for motor carrier service is not used in its lexicographical sense as being indispensably requisite, nor as synonymous with the word “convenience”, but as contemplating a definite public need for a transportation service for which no reasonably adequate public service exists. *Mason’s* Minn.St.1927, §§ 5015–1–5015–19 (M.S.A. § 221.01 et seq.)—*In re Minneapolis & St. L. R. Co.*, 297 N.W. 189, 209 Minn. 564.—*Autos* 83.

Minn. 1936. When the statute requires a certificate of public convenience and necessity as a prerequisite to the construction or extension of any public utility, the word “necessity” is not used in its lexicographical sense of indispensably requisite. If it were, no certificate of public convenience and necessity could ever be granted. The necessity to be provided for is not only the existing urgent need, but the need to be expected in the future, so far as it may be anticipated from the development of the community, the growth of industry, the increase in wealth and population, and all the elements to be expected in the progress of the community. the convenience of the public must not be circumscribed by according to the word “necessity” its lexicographical meaning of an essential requisite.—*Chicago & N.W. Ry. Co. v. Verschingel*, 268 N.W. 2, 197 Minn. 580.

Minn. 1930. Public convenience and “necessity” held not to require construction of extension, and city council’s order directing extension was arbitrary and unreasonable (Gen.St.1923, § 4819).—*State v. Duluth St. Ry. Co.*, 229 N.W. 883, 179 Minn. 548.—*Urb R R* 3.

Minn.App. 1996. “Necessity” for purposes of petition for acquisition of property by eminent domain means necessity now or in the near future. M.S.A. § 117.075.—*Regents of University of Minnesota v. Chicago and North Western Transp. Co.*, 552 N.W.2d 578, review denied.—*Em Dom* 56.

Miss. 1960. The word “necessity” as a statutory requisite for the authorization of the organization of a new bank means substantial or obvious need justifying chartering of new bank in view of disclosed relevant circumstances. Code 1942, § 5160.—*Planters Bank v. Garrott*, 122 So.2d 256, 239 Miss. 248, error overruled 123 So.2d 240, 239 Miss. 248.—*Banks* 6.

Miss.App. 2000. “Necessity,” within the meaning of the statute allowing the owner of land-locked land to petition to have a private road laid out

through someone’s else’s land when necessary for ingress and egress, means reasonable necessity, not absolute necessity. *West’s A.M.C.* § 65–7–201.—*Ganier v. Mansour*, 766 So.2d 3, rehearing denied, and certiorari denied.—*Priv Roads* 2(1).

Mo. 1912. The word “necessity” in V.A.M.S. § 563.690, prohibiting labor on Sunday, excepting works of necessity, should be construed reasonably and neither too literally nor too liberally.—*State v. Chicago, B. & Q.R. Co.*, 143 S.W. 785, 239 Mo. 196.—*Sunday* 7.

Mo.App. W.D. 1998. Child’s education at private college was not a “necessity,” and, therefore, husband was not required to reimburse wife for amounts she spent to send child to private college.—*Jones v. Jones*, 958 S.W.2d 607.—*Child* S 119.

Mo.App. W.D. 1993. Public Service Commission has authority to grant certificates of convenience and necessity if it is determined after due hearing that construction is “necessary” or “convenient” for the public service; term “necessity” does not mean essential or absolutely indispensable but that additional service would be improvement justifying its costs. V.A.M.S. § 393.170, subd. 3.—*State ex rel. Intercon Gas, Inc. v. Public Service Com’n of Missouri*, 848 S.W.2d 593.—*Pub Ut* 113.

Mo.App. W.D. 1980. In regard to certificates of convenience and necessity, term “necessity” does not mean essentially or absolutely indispensable, but, rather, it requires that the evidence show that additional service be an improvement justifying the cost and inconvenience to public as result of lack of the utility, and that such evidence be sufficient to amount to a showing that lack thereof would amount to a necessity.—*State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147.—*Pub Ut* 113.

Mo.App. 1973. Term “necessity” as applied to issuance of certificate of public convenience and necessity does not mean essential but requires that evidence show that additional service would be an improvement justifying its cost and that inconvenience of public occasioned by lack of motor carrier is sufficiently great to amount to necessity. Section 390.051 RSMo 1969, V.A.M.S.—*State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216.—*Autos* 83.

Mo.App. 1962. The public “necessity” in application of motor carrier for increased authority was need for choice of carriers convincingly shown by evidence, and Court of Appeals could not find that Public Service Commission had failed in its statutory duty to consider transportation service offered by protestant in view of its specific conclusion that grant of application would have no detrimental effect on protesting carrier. Sections 386.410, 390.051, subds. 4, 5 RSMo 1959, V.A.M.S.—*State ex rel. Associated Transports, Inc. v. Burton*, 356 S.W.2d 115.—*Autos* 83, 84.

Mo.App. 1962. “Necessity,” of annexation of territory by a city, within act permitting annexation when necessary to proper development of the city,

applies not only to present but also to future needs that are reasonably foreseeable and not too remote or speculative, although visionary needs are too remote. V.A.M.S. § 71.015.—City of Aurora v. Empire Dist. Elec. Co., 354 S.W.2d 45.—Mun Corp 29(3).

Mo.App. 1958. "Necessity" as used in the phrase "convenience and necessity" as applied to regulations by the Public Service Commission does not mean essential or absolutely indispensable, but is used in the sense that the motor vehicle service would be such an improvement as to justify or warrant the expense of making the improvement and that the inconvenience of the public occasioned by the lack of motor vehicle transportation is so great as to amount to a necessity. Section 386.510 RSMo 1949, V.A.M.S.—State ex rel. Transport Delivery Co. v. Burton, 317 S.W.2d 661.—Autos 83.

Mo.App. 1932. Medical attention furnished to wife constitutes "necessity" for which husband, while living with wife, is under legal obligation to supply.—Lowenstein v. Widdicomb, 52 S.W.2d 1044.—Hus & W 19(15).

Mo.App. 1931. Word "necessity" in Sunday law does not mean physical and absolute necessity, but moral fitness or propriety of work and labor done under circumstances of particular case. V.A.M.S. § 563.690.—State v. Coffee, 35 S.W.2d 969, 225 Mo.App. 373.—Sunday 7.

Mo.App. 1931. Convenience of doing work performed on Sunday is not criterion of "necessity". V.A.M.S. § 563.690.—State v. Coffee, 35 S.W.2d 969, 225 Mo.App. 373.—Sunday 7.

Mo.App. 1925. Operating picture machine on Sunday held not work of "necessity".—State v. Kennedy, 277 S.W. 943.—Sunday 7.

Mo.App. 1905. The word "necessity," in common use, connotes different degrees of necessity. It sometimes means indispensable; at others, needful, requisite, incidental, or conducive. In its primary sense, it signifies a thing or act without which some other thing or act cannot be done or exist. The word "necessary," as applied to the determination of an agent's power to do an incidental act, should be held to mean an act or measure requisite to enable him to discharge his main duty—something more urgently required than is signified by the words, "appropriate," "suitable," or "expedient."—St. Louis Gunning Advertising Co. v. Wanamaker & Brown, 90 S.W. 737, 115 Mo.App. 270.

Mont. 1969. "Necessity" within statutory requirement of finding that proposed taking is necessary to public use under circumstances of individual case does not mean absolute or indispensable necessity but under statute the taking need only be shown to be reasonable, requisite, and proper for accomplishment of the end in view, under particular circumstances of case. R.C.M.1947, §§ 93–9905, 93–9911.—Montana Power Co. v. Bokma, 457 P.2d 769, 153 Mont. 390.—Em Dom 56.

Mont. 1962. "Convenience" and "necessity" within statute providing for issuance by Livestock Commission of certificates of "public convenience

and necessity" for operation of livestock markets are not synonymous. R.C.M.1947, §§ 46–907 et seq., 46–908, 46–909, 46–917.—Application of Baker Sales Barn, Inc., 367 P.2d 775, 140 Mont. 1.—Fact 2.

Mont. 1961. Insolvency of mutual irrigation company which had acquired another company's canal by contract containing covenants, as consideration for conveyance, placing it under obligations of, inter alia, furnishing other company and its users with same amount of water they had been receiving, was not a "good cause" or "necessity" which could allow insolvent company to condemn such covenants. R.C.M.1947, §§ 93–9904, 93–9905.—Cove Irr. Co. v. Yellowstone Ditch Co., 362 P.2d 543, 139 Mont. 281.—Em Dom 56.

Mont. 1926. Instruction that plaintiff was required only to show that his demands with reference to road from his land to public highway were reasonable, and that proposed road was reasonable "necessity," held proper.—Komposh v. Powers, 244 P. 298, 75 Mont. 493, affirmed 48 S.Ct. 156, 275 U.S. 504, 72 L.Ed. 396.—Em Dom 198(1).

Neb. 1963. "Necessity," for purpose of determining whether implied easement has been created, refers to operation relating directly to functions to be performed on the premises.—Price Realty Co. v. Airport Authority of City of Lincoln, 124 N.W.2d 207, 175 Neb. 791.—Ease 15.1.

Neb. 1946. Under requirement that bus company must show public convenience and necessity in order to authorize an extension of its line, the word "necessity" is not synonymous with "convenience" but contemplates a definite public need for a transportation service for which no reasonably adequate public service exists. R.S.1943, § 75–222.—In re Moritz, 23 N.W.2d 545, 147 Neb. 400.—Autos 83.

Neb. 1940. Anything which tends to cripple seriously or destroy an established system of transportation that is necessary to a community is not a "convenience" and "necessity" for the public.—Application of Chicago, B. & Q. R. Co., 295 N.W. 389, 138 Neb. 767.—R R 214.

Neb. 1940. In proceeding by railroad for permission to discontinue motor passenger trains on branch line, evidence and findings of Nebraska State Railway Commission did not show public "necessity" for the motor passenger trains in view of other available services of railroad and of other common carriers. Comp.St.1929, § 75–201; Const. art. 4, § 20.—Application of Chicago, B. & Q. R. Co., 295 N.W. 389, 138 Neb. 767.—R R 227.

Nev. 1949. Evidence that proposed route for "farm and mine to market road" offered greater safety to traveling public and that proposed alternate route was not safe was sufficient to show "necessity" for the taking of the proposed route. N.C.L.1929, § 9156; St.1945, c. 174.—State ex rel. Department of Highways v. Pinson, 207 P.2d 1105, 66 Nev. 227.—Em Dom 196.

Nev. 1949. The word "necessity" in statute providing that "necessity" for the taking is condition precedent to condemnation does not mean absolute

and unconditional necessity as determined by physical causes but means reasonable necessity under all the circumstances. N.C.L.1929, § 9156.—State ex rel. Department of Highways v. Pinson, 207 P.2d 1105, 66 Nev. 227.—Em Dom 56.

N.H. 1916. Under Pub.St. 1891, c. 271, § 3, prohibiting Sunday work of one's secular calling to the disturbance of others except works of necessity, the word "necessity" has the same limiting effect as in earlier times.—State v. Lavoie, 97 A. 566, 78 N.H. 99.—Sunday 7.

N.J.Super.A.D. 1968. Predominating and controlling element in determining "necessity" for consolidation of two bus routes into one through route is factor of public need for proposed service and necessity need not be shown in sense of absolutely indispensable element. R.S. 48:2-14, N.J.S.A.—Petition of Public Service Coordinated Transport, 247 A.2d 888, 103 N.J.Super. 505.—Autos 83.

N.J.Super.A.D. 1957. The word "necessary" as used in setting forth the factors indicative of the existence of a quasi-easement, differs from the "necessity" required in establishing a "way of necessity" and what is intended is nothing greater than a reasonable necessity, and not the absolute necessity required in establishing an "easement of necessity".—Adams v. Cale, 137 A.2d 92, 48 N.J.Super. 119.—Ease 15.1.

N.J.Super.L. 1969. The "necessity" which may give rise to easement does not necessarily connote that without an easement the dominant tenant could have no beneficial enjoyment of his lands whatsoever, and "necessity" means reasonably necessary for convenient, comfortable or beneficial enjoyment.—Den Gre Plastics Co. v. Travelers Indem. Co., 259 A.2d 485, 107 N.J.Super. 535.—Ease 15.1.

N.J.Super.Ch. 1958. The "necessity" which may give rise to an easement does not necessarily connote that without an easement the dominant tenant could have no beneficial enjoyment of his lands whatsoever, and word should be understood as meaning reasonably necessary for convenient, comfortable or beneficial enjoyment.—Tidewater Oil Co. v. Camden Securities Co., 139 A.2d 318, 49 N.J.Super. 155.—Ease 18(1).

N.J.Cir.Ct. 1927. "Public necessity" of a municipal improvement, within P.L.1922, p. 201, N.J.S.A. 40:49-7, implies more than a mere unanticipated or unforeseen public emergency, and may include a general progressive measure of municipal improvements consistent with reasonable convenience, the general welfare, and the fair ability of the community to pay therefor, without unduly burdensome or confiscatory taxes, the policy to be followed in this respect resting with the municipal governing body; "necessity" being a condition, state or quality of being necessary or needful; "public necessity" meaning needed for reasonable convenience, facility, and completeness in accomplishing a public purpose.—In re Washington Ave. in Borough of Chatham, 139 A. 239, 5 N.J.Misc. 858.

N.J.Co. 1955. "Necessity" within meaning of statute prohibiting carrying on of business on Sun-

day except for works of necessity and charity, is not physical or absolute necessity but a propriety of work and labor done under particular circumstances. N.J.S. 2A:171-1 et seq., N.J.S.A.—State v. Fair Lawn Service Center, 114 A.2d 487, 35 N.J.Super. 549, reversed 120 A.2d 233, 20 N.J. 468.—Sunday 7.

N.J.Co. 1955. Operation of automobile washing was not work of "necessity" within meaning of statute prohibiting carrying on of business on Sunday except for works of necessity and charity. N.J.S. 2A:171-1 et seq., N.J.S.A.—State v. Fair Lawn Service Center, 114 A.2d 487, 35 N.J.Super. 549, reversed 120 A.2d 233, 20 N.J. 468.—Sunday 7.

N.M. 1957. The terms "necessity" and "convenience", as used in statute governing issuance of certificates of convenience and necessity, do not refer to necessity and convenience of carrier, but to necessity and convenience of public. 1953 Comp. § 64-27-8.—Ferguson-Steere Motor Co. v. State Corp. Commission, 314 P.2d 894, 63 N.M. 137.—Carr 8.

N.M. 1940. "Necessity," one of the bases underlying all exceptions to the hearsay rule, is not necessarily predicated on the fact that there is no other evidence available from any source to prove the point in question, but rather that a "necessity" exists because the particular information is not obtainable in a more authentic form from the same source.—In re Roeder's Estate, 103 P.2d 631, 44 N.M. 429.—Evid 314(1).

N.Y.A.D. 2 Dept. 1983. In evaluating whether there was manifest necessity for mistrial, and thus whether subsequent prosecution is barred by double jeopardy, word "necessity" is not to be interpreted literally; all that is required is high degree of necessity before concluding that mistrial is appropriate. McKinney's CPL § 210.20.—People v. Gentile, 466 N.Y.S.2d 405, 96 A.D.2d 950.—Double J 99.

N.Y.A.D. 2 Dept. 1919. Findings by the board of estimate and apportionment, on application by the city of New York to extend a street over a railroad, that "the public interest" required a continuance of a street, was a finding that there was a "necessity," within the meaning of Railroad Law, § 90, for the extension of the street, although the word "necessary" was not used, the principal consideration of the "necessity" being the public welfare; but mere convenience should not satisfy the term, in view of the fact that a part of the cost of crossing is upon the railroad.—In re Eighty-Fourth Street in Borough of Queens, City of New York, 178 N.Y.S. 617, 189 A.D. 315.—R R 96.

N.Y.A.D. 3 Dept. 1995. Under State Constitution, emergency is not necessary for legislature's approval of appropriation bill after commencement of state's fiscal year and prior to approval of state budget; Constitution provides for passage of such bills on certification of necessity by the Governor, and "emergency" and "necessity" are not synonymous. McKinney's Const. Art. 7, § 5.—Schulz v. Silver, 629 N.Y.S.2d 316, 212 A.D.2d 293, appeal dismissed 634 N.Y.S.2d 438, 86 N.Y.2d 835, 658

N.E.2d 216, leave to appeal dismissed in part, denied in part 641 N.Y.S.2d 594, 87 N.Y.2d 916, 664 N.E.2d 506.—States 131.

N.Y.A.D. 3 Dept. 1914. The “necessity” for land sought to be condemned by an electric light and power company, which will justify its condemnation, need not be an absolute necessity, but only a reasonable necessity of the corporation in the discharge of its duty to the public.—*Oneonta Light & Power Co. v. Schwarzenbach*, 150 N.Y.S. 76, 164 A.D. 548, affirmed 114 N.E. 1075, 219 N.Y. 588.

N.Y.Sup. 1959. If conditions under which landlord’s son and his family lived prevented their begetting of children, there was such immediate and compelling “necessity” for obtaining apartment for use of landlord’s son and his family as would justify issuance of certificate of eviction.—*Gaweda v. Herman*, 195 N.Y.S.2d 707.—*Land & Ten* 278.7(3).

N.Y.Sup. 1949. Where owner seeks to recover premises from tenant for his own occupancy on ground of compelling necessity, “necessity” means a state or condition imperatively demanding relief, and “compelling” means something definitely needful, something essentially required by nature of things or circumstances.—*Jacoby v. Coster*, 88 N.Y.S.2d 545, 194 Misc. 1039.—*Land & Ten* 278.7(2).

N.Y.Sup. 1948. “Necessity” imports more than desire or convenience, but must be real, immediate, and urgent, and means a state or condition imperatively demanding relief.—*Olson v. Ross*, 82 N.Y.S.2d 49.

N.Y.Mun.Ct. 1946. The word “necessity” does not have a fixed character, but has varying degrees of meaning, such as a necessity which is unavoidable, and a necessity which is merely a matter of convenience.—*Holbert v. Harrigan*, 66 N.Y.S.2d 246, 187 Misc. 858.

N.Y.Mun.Ct. 1946. In considering the “necessity” of taking private property for public use, the courts recognize varying degrees of meaning which may attach to the quoted word; as absolute necessity, or something indispensable; or as reasonable necessity, which may imply what is practical or merely what is reasonably convenient.—*Boland v. Beebe*, 62 N.Y.S.2d 8, 186 Misc. 616.—*Em Dom* 56.

N.Y.Mun.Ct. 1945. “Necessity” means a state or condition imperatively demanding relief, and is different from mere convenience.—*Hammond v. Marcey*, 58 N.Y.S.2d 565.

N.Y.Dist.Ct. 1971. Car wash was a “necessity” within Sabbath law prohibiting trades, manufactures, agriculture or mechanical employment upon first day of week except when they are works of necessity. General Business Law § 8.—*People v. Meyer*, 326 N.Y.S.2d 429, 68 Misc.2d 162.—*Sunday* 7.

N.Y.Mag.Ct. 1954. Under statute prohibiting labor on Sunday except work of “necessity” and charity, “necessity” means that which is required or needful to accomplish a lawful purpose. Penal

Law, § 2143.—*People v. Gill*, 134 N.Y.S.2d 622, 206 Misc. 585.—*Sunday* 7.

N.Y.Mag.Ct. 1954. Where operator of commercial automobile washing laundry permitted his employees to wash, under his supervision, automobiles on Sunday, such conduct constituted “labor” which was not a work of “necessity” needful for the “good order, health or comfort” of the community under statute prohibiting labor on Sunday excepting works of necessity and charity. Penal Law, § 2143.—*People v. Gill*, 134 N.Y.S.2d 622, 206 Misc. 585.—*Sunday* 7.

N.C. 1963. The “necessity” required for a finding of public convenience and necessity to permit modification of utilities commission order means reasonable necessity and not an absolute imperative need. G.S. § 62-121.43 et seq.—*State ex rel. Utilities Commission v. Carolina Coach Co.*, 132 S.E.2d 249, 260 N.C. 43.—*Pub Ut* 113.

N.C. 1946. The word “immediate”, in federal rent regulation authorizing recovery of leased premises by landlord acting in good faith and showing “immediate compelling necessity” for landlord’s own occupancy of premises, means without delay, and “compelling” means something overpowering admitting of no choice, and “necessity” imports negation of freedom, and the entire phrase means a situation imperatively requiring relief or course of action impelled by uncontrollable circumstances. Emergency Price Control Act of 1942, § 2, as amended, 50 U.S.C.A. Appendix, § 902.—*Swink v. Horn*, 40 S.E.2d 353, 226 N.C. 713.—*Land & Ten* 278.7(2); *War* 229.

N.C. 1944. Determination of city council of Reidsville that establishment of a municipal airport was a “necessity” and for a “public purpose” was not an abuse of discretion, notwithstanding there were no public planes operating in and out of the city at present. Laws 1943, c. 186, § 1½; Const. art. 5, § 3; art. 7, § 7.—*City of Reidsville v. Slade*, 29 S.E.2d 215, 224 N.C. 48.—*Mun Corp* 276, 957(1).

N.C.App. 2002. The element of “necessity,” with an implied easement by prior use, does not require a showing of absolute necessity; it is sufficient to show such physical conditions and such use as would reasonably lead one to believe that grantor or intended grantee should have the right to continue to use a road in the same manner and to the same extent which his grantor had used it, because such use was reasonably necessary to the fair, full, convenient, and comfortable enjoyment of his property.—*Metts v. Turner*, 561 S.E.2d 345, 149 N.C.App. 844, review denied 568 S.E.2d 198, 356 N.C. 164.—*Ease* 17(1).

N.C.App. 2002. “Necessity” excuses otherwise criminal behavior which was reasonably necessary to protect life, limb, or health, and where no other acceptable choice was available.—*State v. Napier*, 560 S.E.2d 867, 149 N.C.App. 462.—*Crim Law* 38.

Ohio 1965. What constitutes work of “necessity” under exception to Sunday closing statute is question of fact dependent on circumstances surrounding particular case. R.C. § 3773.24.—*State v.*

Footlick, 207 N.E.2d 759, 2 Ohio St.2d 206, 31 O.O.2d 411.—Sunday 29(4).

Ohio 1958. In Sunday closing law providing that it did not apply to work of necessity or charity, there is no fixed and unvarying definition of "necessity"; the term is an elastic one and does not mean that which is wholly indispensable, but it does mean something more than that which is merely needful, desirable or convenient. R.C. § 3773.24.—State v. Kidd, 150 N.E.2d 413, 167 Ohio St. 521, 5 O.O.2d 202, appeal dismissed *Ullner v. State of Ohio*, 79 S.Ct. 230, 358 U.S. 131, 3 L.Ed.2d 225, appeal dismissed 79 S.Ct. 235, 358 U.S. 132, 3 L.Ed.2d 225.—Sunday 7.

Ohio 1953. "Necessity" for motor transportation service, as contemplated by the Motor Transportation Act, is not synonymous with "convenience" or alternative thereto. Gen.Code, §§ 614-84 to 614-102a.—*Mohawk Motor v. Public Utilities Commission*, 110 N.E.2d 909, 159 Ohio St. 77, 50 O.O. 63.—Autos 83.

Ohio 1953. Finding of public "necessity" for issuance of certificate to operate motor transportation company cannot be predicated upon theory that each community is entitled as a matter of policy to both a regular and irregular certificated service.—*Mohawk Motor v. Public Utilities Commission*, 110 N.E.2d 909, 159 Ohio St. 77, 50 O.O. 63.—Autos 83.

Ohio 1953. A "necessity" for motor transportation service as contemplated by the Motor Transportation Act is not synonymous with a "convenience", but is a definite need of the general public for a transportation service where no reasonably adequate service exists. Gen.Code, § 614-87.—*D.G. & U. Truck Lines v. Public Utilities Commission*, 110 N.E.2d 587, 158 Ohio St. 564, 49 O.O. 477.—Autos 83.

Ohio 1930. "Necessity" for motor transportation service is not synonymous with "convenience," but is definite need of general public for service, where no reasonably adequate service exists.—*Canton-East Liverpool Coach Co. v. Public Utilities Commission of Ohio*, 174 N.E. 244, 33 Ohio Law Rep. 516, 123 Ohio St. 127, 9 Ohio Law Abs. 61.—Autos 83; Carr 10.

Ohio App. 9 Dist. 1962. Sale of milk and milk products by milk company, which did not have sufficient storage space for more than one day's supply of milk and which could not economically enlarge the storage capacity of dump the Sunday supply on the wholesale market, was not a "necessity" within terms of Sunday closing law. R.C. § 3773.24.—*State v. Gilfether*, 184 N.E.2d 673, 89 Ohio Law Abs. 89.—Sunday 7.

Ohio App. 10 Dist. 1971. "Necessity" within appropriation statutes means because of a public use or the public welfare. R.C. §§ 163.09(B), 3313.39; Const. art. 1, § 19.—*Board of Ed. of City School Dist. of Columbus v. Holding Corp. of Ohio*, 278 N.E.2d 693, 29 Ohio App.2d 114, 58 O.O.2d 165.—Em Dom 56.

Ohio Com.Pl. 1969. "Necessity" means that which is indispensable or requisite, especially toward attainment of some end; in statutory eminent domain cases, it cannot be limited to an absolute physical necessity but means reasonably convenient or useful to public. R.C. § 163.09(B).—*City of Dayton v. Keys*, 252 N.E.2d 655, 21 Ohio Misc. 105, 50 O.O.2d 29, 50 O.O.2d 228.—Em Dom 56.

Ohio Com.Pl. 1958. The term "necessity" with respect to the taking of land for relocation of a highway does not mean indispensable, but rather appropriate or fitting to the particular instance.—*City of Lakewood v. Thormyer*, 154 N.E.2d 777, 10 O.O.2d 61, 80 Ohio Law Abs. 65, affirmed 157 N.E.2d 431, 111 Ohio App. 403, 14 O.O.2d 414, affirmed 168 N.E.2d 289, 171 Ohio St. 135, 12 O.O.2d 162.—Em Dom 56.

Ohio Mun. 1963. The operation of an automobile washing establishment constituted a work of "necessity" excluded from general prohibitive clause of Sunday statute and as well was within specific exemption as "incidental" to "traveling." R.C. § 3773.24, subd. (A).—*State v. Applebaum*, 187 N.E.2d 526, 22 O.O.2d 29, 90 Ohio Law Abs. 246.—Sunday 5, 7.

Okla. 1997. "Necessity" of taking private property for public purposes does not mean an absolute but only a reasonable necessity. Const. Art. 2, §§ 23, 24.—*Public Service Co. of Oklahoma v. B. Willis, C.P.A., Inc.*, 941 P.2d 995, 1997 OK 78.—Em Dom 56.

Okla. 1978. Word "necessity," as employed in condemnation proceedings, does not mean absolute but only reasonable necessity, and municipality, in exercise of its powers of eminent domain, has power and authority to condemn property, in absence of fraud, bad faith, or abuse of discretion, although such property sought to be condemned is not absolutely necessary for public purpose. O.S.1971, Const. art. 2, §§ 23, 24.—*Luccock v. City of Norman*, 578 P.2d 1204, 1978 OK 66.—Em Dom 56.

Okla. 1966. Only a reasonable, and not an absolute, "necessity" is required, and in absence of fraud, bad faith or abuse of discretion, municipality may condemn property even though it is not absolutely necessary for public purposes.—*Oklahoma City v. Cooper*, 420 P.2d 508, 1966 OK 10, certiorari denied 87 S.Ct. 203, 385 U.S. 898, 17 L.Ed.2d 131.—Em Dom 56.

Okla. 1947. "Necessity," as applied to certificate of public convenience and necessity means a public need, without which the public is inconvenienced in business, wholesome pleasure, or both; the people generally of a community being denied to their detriment that which is enjoyed by other people generally, similarly situated. 47 Okl.St. Ann. § 166.—*Oklahoma Transp. Co. v. State*, 177 P.2d 93, 198 Okla. 246, 1947 OK 42.—Autos 83.

Okla. 1941. The word "necessity" in connection with condemnation proceedings does not mean an absolute but only a reasonable necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the

condemning party and property owner consistent with such benefit.—Grand River Dam Authority v. Thompson, 113 P.2d 818, 189 Okla. 89, 1941 OK 164.

Okla. 1938. Where existence of public convenience and "necessity" is a prerequisite to the authorization of motor carrier to furnish service as required by statute, word "necessity" means a public need, without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or wholesome pleasure or both, and without which the people generally of the community are denied, to their detriment, that which is enjoyed by other people generally, who are similarly situated. 47 Okl.St. Ann. § 166.—Missouri, Kansas & Oklahoma Coach Lines v. State, 81 P.2d 660, 183 Okla. 278, 1938 OK 388.—Autos 83.

Okla. 1938. Where citizens living in communities between certain cities were unable to obtain bus transportation to either of the cities in order to arrive at their destination by 9 a.m. unless they caught a bus at an unreasonably early hour, there was "inconvenience" to the extent of handicapping business within the purview of "necessity," as used in statute dealing with certificates of public convenience and necessity. 47 Okl.St. Ann. § 166.—Missouri, Kansas & Oklahoma Coach Lines v. State, 81 P.2d 660, 183 Okla. 278, 1938 OK 388.—Autos 83.

Okla. 1930. "Necessity," as applied to certificate of public convenience, means public need, without which public is inconvenienced in business, wholesome pleasure, or both, Laws 1923, c. 113, § 4 [repealed 1933].—Oklahoma Union Ry. Co. v. State, 293 P. 537, 146 Okla. 92, 1930 OK 538.—Autos 77.

Okla. 1928. "Necessity" in connection with condemnation proceedings does not mean absolute but only reasonable necessity.—White v. City of Pawhuska, 265 P. 1059, 130 Okla. 156, 1928 OK 136.—Em Dom 56.

Okla. 1927. "Necessity" for motor carrier service means public need, without which public is handicapped in business or pleasure. Laws 1923, c. 113, § 4.—Chicago, R. I. & P. Ry. Co. v. State, 258 P. 874, 126 Okla. 48, 1927 OK 202.—Autos 77; Carr 8.

Okla. 1926. "Necessity" for motor carrier means that service would be improvement of existing transportation, warranting expense, and it should appear that inconvenience from lack of service amounts to necessity, Laws 1923, c. 113, § 4 [repealed 1933].—Chicago, R. I. & P. Ry. Co. v. State, 252 P. 849, 123 Okla. 190, 1926 OK 680.—Autos 83.

Okla.Crim.App. 1921. The word "necessity," as used in Rev.Laws 1910, § 2405, as amended by Laws 1913, c. 204, does not mean that which is indispensable, but means something more than that which is merely useful, advisable, or desirable; so that a thing which is merely useful or desirable in a town might be a necessity in a great city, and that which was a luxury a century ago may have become

a necessity now.—State v. Smith, 198 P. 879, 19 Okla.Crim. 184.—Sunday 7.

Or. 1941. Food, shelter and clothing are physical "necessities". In an enlightened community the common education of a child is a moral and social "necessity".—Jackman v. Short, 109 P.2d 860, 165 Or. 626, 133 A.L.R. 887.

Or. 1928. In prosecution of prohibition officer for assault with dangerous weapon in which defendant claimed right of "self-defense" and right of "necessity" to use sufficient force to search car, both features of case should have been submitted to jury under proper instructions under evidence.—State v. Linville, 273 P. 338, 127 Or. 565.—Assault 96(2), 96(3).

Or.App. 1983. The statutory "necessity" required for permit to treat estuarine oyster beds with pesticide Sevin to control mud and ghost shrimp was not necessity for the public, as opposed to interests of commercial oyster growers. ORS 509.140(2).—Oregon Shores Conservation Coalition v. Oregon Fish and Wildlife Com'n, 662 P.2d 356, 62 Or.App. 481, review denied 668 P.2d 381, 295 Or. 259.—Fish 7(1).

Or.App. 1981. "Necessity" in context of use of out-of-court statement in criminal prosecution means only that declarant be unavailable to testify and not that no other evidence be available to establish material fact in question.—State v. Echeverria, 626 P.2d 897, 51 Or.App. 513, review denied 631 P.2d 341, 291 Or. 118.—Crim Law 419(5).

Pa. 1898. "Necessity," as used in relation to the necessity of the commonwealth to use the dying declarations as evidence in a prosecution for murder which makes them admissible, does not mean the exigency of any particular case, but a public necessity which civilized society feels the pressure of for the protection of human life by the punishment of manslaughter.—Commonwealth v. Roddy, 39 A. 211, 184 Pa. 274.

Pa.Super. 1991. Private road over one of three adjoining parcels to public road was "necessity" where property from which road was to run was completely landlocked, notwithstanding contention by owners of one of three parcels that it was not necessary that road run across their property since road could also run across others' property. 36 P.S. § 2731.—In re Laying Out and Opening a Private Road, 592 A.2d 343, 405 Pa.Super. 298.—Priv Roads 1.

Pa.Super. 1963. Term "necessity" for club liquor license in resort area is met if a sufficient need is established for pleasure, convenience and general welfare of club members rather than convenience or necessity as to entire resort area. 47 P.S. §§ 4-404, 4-461, 4-464.—Appeal of Aqua Club, 195 A.2d 802, 202 Pa.Super. 192.—Int Liq 69.

Pa.Super. 1956. The statute governing establishment of private roads does not require absolute "necessity," such as being completely landlocked, but mere inconvenience in use of existing road is not enough and existing road must be of a limited privilege or extremely difficult and burdensome in

its use to warrant appropriation of another more convenient course. 36 P.S. § 2731.—Application of Little, 119 A.2d 587, 180 Pa.Super. 555.—Priv Roads 2(1).

Pa.Super. 1933. Nursing services rendered to mentally infirm wife are “necessity” within statute imposing liability against wife’s separate estate. 48 P.S. § 116.—In re McGinnis’ Estate, 167 A. 616, 109 Pa.Super. 248.—Hus & W 151(7).

R.I. 1927. “Necessity” for motorbus line means reasonably requisite. Gen.Laws 1923, § 3724.—Abbott v. Public Utilities Commission, 136 A. 490, 48 R.I. 196.—Autos 83.

S.C. 1965. “Necessity” within Sunday closing law exception for work of necessity does not mean that which is indispensable but means something more than that which is merely needful or desirable. Code 1962, § 64-2.—State v. Solomon, 141 S.E.2d 818, 245 S.C. 550, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.—Sunday 7.

S.C. 1942. The “necessity” authorizing an implication of a grant of a visible easement of a roadway used at the time of severance of a tract by conveyance of a part thereof must be actual, real and reasonable as distinguished from inconvenience but need not be absolute and irresistible.—Merrimon v. McCain, 21 S.E.2d 404, 201 S.C. 76.—Ease 18(1).

S.C. 1930. “Necessity,” as well as public use, must exist to warrant condemnation by public service corporation.—Seabrook v. Carolina Power & Light Co., 156 S.E. 1, 159 S.C. 1.—Em Dom 56.

S.C. 1929. “Necessity” as well as public use must exist to warrant condemning of lands by grantee of power of eminent domain.—White v. Johnson, 146 S.E. 411, 148 S.C. 488.—Em Dom 56.

S.C. 1908. “Necessity” is an elastic term. It does not mean that which is indispensable, but it means something more than that which is merely needful or desirable. No doubt a thing which is merely needful or desirable to the residents of a town might be a “necessity” to the residents of a great city. So, also, that which was a luxury a century ago may have become now a “necessity.” There is always, however, a tendency to claim accustomed luxuries as necessities falling within the exception of the Sunday law as to work of necessity. The obvious intention of a statute making it an offense for a person to do work on Sunday, unless such work is a work of “necessity,” is to set apart one day for rest from ordinary labor, so as to give opportunity to all for leisure and the contemplation of the higher things of life. This purpose would be defeated if the courts should hold every work a “necessity,” the interruption of which would break into the ordinary habits of the community, or produce a degree of public inconvenience or discomfort. The continuance on Sunday of ordinary sales or deliveries of ice or fresh meat is not a work of “necessity” in a town.—State v. James, 62 S.E. 214, 81 S.C. 197, 18 L.R.A.N.S. 617, 128 Am.St.Rep. 902, 16 Am. Ann. Cas. 277.

S.D. 1945. “Necessity,” as respects public convenience and necessity in granting railroad permit to construct a spur track, does not mean indispensable, but means a public need without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or wholesome pleasure, or both, without which the people generally of the community are denied to their detriment that which is enjoyed by other people, generally, similarly situated. SDC 52.0827.—Illinois Cent. R. Co. v. Wisconsin Granite Co., 19 N.W.2d 753, 70 S.D. 558.—R R 225.

Tenn. 1943. Where one conducts a bona fide restaurant on Sunday, it is one of the usual vocations that is regarded as a “necessity” and therefore not subject to prosecution under statute. Code 1932, § 5253.—Baird v. State, 167 S.W.2d 332, 179 Tenn. 444.—Sunday 7.

Tenn. 1943. One taking out restaurant license merely as blind in order to conduct his real business of selling beer is not immune, from prosecution for following his usual vocation on Sunday, but business of operating bona fide restaurant which is regarded as a “necessity” and selling beer thereat as incident to serving of real meals on Sunday is not violation of statute prohibiting exercise of common vocations of life on Sunday. Code 1932, § 5253.—Baird v. State, 167 S.W.2d 332, 179 Tenn. 444.—Sunday 7.

Tenn. 1940. Funeral expenses, incident to burial of minor child, is “necessity,” for which child’s parents are liable.—Rose Funeral Home v. Julian, 144 S.W.2d 755, 176 Tenn. 534, 131 A.L.R. 858.—Child S 100.

Tenn.Crim.App. 1995. Defense of “necessity” allows conduct be justified if: person reasonably believes that conduct is immediately necessary to avoid imminent harm, and desirability and urgency avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct. West’s Tenn.Code, § 39-11-609.—State v. Green, 915 S.W.2d 827.—Crim Law 38.

Tenn.Crim.App. 1994. Common law historically distinguished between defenses of duress and necessity; “duress” was said to excuse criminal conduct where actor was under unlawful threat of imminent death or serious bodily injury, which caused actor to engage in conduct violating literal terms of criminal law, while defense of “necessity,” or “choice of evils,” traditionally covered situation where forces beyond actor’s control rendered illegal conduct lesser of two evils.—State v. Culp, 900 S.W.2d 707, appeal after remand 1997 WL 97870, appeal denied.—Crim Law 38.

Tenn.Ct.App. 2000. Tennessee law interprets “necessity,” in the context of implied easements as meaning reasonably necessary for the enjoyment of the dominant tenement.—The Pointe, LLC v. Lake Management Ass’n, Inc., 50 S.W.3d 471, appeal denied.—Ease 15.1.

Tex.Com.App. 1932. Term “necessity,” in act excepting works of necessity from those prohibited

on Sunday, means economic and moral necessity incident to particular trade or calling, rather than absolute unavoidable physical necessity.—*Casualty Reciprocal Exchange v. Stephens*, 45 S.W.2d 143.—Sunday 7.

Tex.Crim.App. 1912. The term “necessity,” as employed in the Sunday statutes, defined.—*Lane v. State*, 150 S.W. 637, 68 Tex.Crim. 4.—Sunday 7.

Tex.Crim.App. 1900. “Necessity,” within Pen. Code, art. 196, Vernon’s Ann.P.C. art. 283, prohibiting Sunday labor, except works of necessity, cannot be construed to include, in the absence of special circumstances, the work of a barber in shaving customers on Sunday.—*Ex parte Kennedy*, 58 S.W. 129, 42 Tex.Crim. 148, 51 L.R.A. 270.

Tex.App.—Texarkana 1996. “Necessity” for permitting closed-circuit testimony by child in aggravated sexual assault prosecution was established by findings that child was seven years old at time of trial, defendant was child’s father, that child would not be able to verbalize in defendant’s presence, and that a face-to-face confrontation would be traumatic and not in the child’s best interest. Vernon’s Ann.Texas C.C.P. art. 38.071, §§ 1, 8(a).—*Driggers v. State*, 940 S.W.2d 699, rehearing overruled, and petition for discretionary review refused.—Witn 228.

Tex.App.—Beaumont 1994. “Necessity” justifies conduct in following circumstances: actor reasonably believes conduct is immediately necessary to avoid imminent harm; desirability and urgency of avoiding the harm clearly outweighs, according to ordinary standards of reasonableness, harm sought to be prevented by the law proscribing the conduct; and legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear. V.T.C.A., Penal Code § 9.22.—*Bell v. State*, 885 S.W.2d 282.—Crim Law 38.

Tex.Civ.App.—Austin 1945. The term “necessity” in Motor Carrier Act, providing for issuance of certificates of public convenience and necessity for motor carrier service, does not mean absolute or indispensable, but is used with relative connotation, and terms “convenience” and “necessity” therein cannot be considered separately, but are inter-related.—*Metro Bus Lines v. Railroad Commission*, 188 S.W.2d 210, reversed 191 S.W.2d 10, 144 Tex. 420.—Autos 77.

Tex.Civ.App.—Austin 1945. A motor carrier service, which becomes a convenience by saving time and distance and eliminating hazards to large number of public, though not indispensable to them, is a “necessity” within act providing for issuance of certificates of convenience and necessity.—*Metro Bus Lines v. Railroad Commission*, 188 S.W.2d 210, reversed 191 S.W.2d 10, 144 Tex. 420.—Autos 77.

Tex.Civ.App.—Austin 1933. Public necessity for proposed bus line must be established from facts and circumstances existing in territory involved, commission being required to consider prime importance of public interest in highways, declared policy of state, existing bus facilities, state of highways, and whether operation would unreasonably

interfere with public use of highways. Vernon’s Ann.Civ.St. art. 911a. “Necessity,” in respect to bus lines, does not mean essential or absolutely indispensable, but that motor vehicle service would be such an improvement of existing motor transportation as to justify or warrant expense of making improvement, and contemplates a definite public need for a public transportation service in a territory where no reasonably adequate public service exists.—*Railroad Commission of Texas v. Shupree*, 57 S.W.2d 295, affirmed 73 S.W.2d 505, 123 Tex. 521.

Tex.Civ.App.—San Antonio 1951. Where there is a partition of land by joint owners, each takes his portion of the land subject to such continuous, apparent, permanent and necessary easements as exist at time of partition or had theretofore existed at time of their common ancestor or grantor, and the “necessity” under such doctrine is not necessity in the strictest sense, but means only that such use is necessary for the convenient and comfortable enjoyment of the property as it existed when severance was made.—*Zapata County v. Llanos*, 239 S.W.2d 699, ref. n.r.e.—Partit 116(2).

Tex.Civ.App.—San Antonio 1950. In divorce action, requiring attorney’s fees awarded wife against whom divorce was granted to be paid by the receiver out of the proceeds of the sale of community property was proper on ground that they were a “necessity” for the protection of the wife’s property rights.—*Thompson v. Thompson*, 231 S.W.2d 496.—Hus & W 268(4).

Tex.Civ.App.—Dallas 1941. As husband, contracting with city for water service at spouses’ home, presumably acted as community agent in securing a “necessity” for marital partnership, water bills were presumably paid out of joint fund, and “privity” denotes mutual or successive relationship to same rights of property, wife was entitled to share benefits, as well as burdens, of such contract, and hence could maintain suit to recover damages from city for unwarranted discontinuance of service after husband’s death as against contention that no privity of contract existed between wife and city. Vernon’s Ann.Civ.St. arts. 4620, 4621.—*City of Dallas v. Brown*, 150 S.W.2d 129, writ dismissed.—Waters 203(13).

Tex.Civ.App.—Amarillo 1936. In compensation proceedings for injuries sustained by employee on Sunday, charge to jury that “necessity” meant not an absolute, unavoidable physical necessity, but rather an economic and moral necessity, held not objectionable as being in the nature of a general charge.—*Texas Emp. Ins. Ass’n v. Hamor*, 97 S.W.2d 1041.—Trial 215.

Tex.Civ.App.—Amarillo 1929. Under Vernon’s Ann.P.C., arts. 283, 284, punishing employers who require employees to labor on works other than works of necessity on Sunday, the term “necessity” is economic and moral necessity, which may grow out of or be incident to particular trade or calling rather than absolute, unavoidable, physical necessity.—*Maryland Cas. Co. v. Marshall*, 14 S.W.2d 337, writ dismissed.

Tex.Civ.App.—El Paso 1929. Allegations in pleadings and testimony of worker in oil field that his contract of employment called for seven days labor per week, that he worked seven days a week for which he received a daily wage, and that accident in which he was injured occurred on Sunday, held not to show as matter of law that employment contract was illegal under Vernon's Ann.P.C. arts. 283, 284, in that it required labor on Sunday in other than works of necessity; term "necessity" not being limited to unavoidable physical necessity.—Maryland Cas. Co. v. Garrett, 18 S.W.2d 1102, writ dismissed w.o.j.

Tex.Civ.App.—Waco 1967. Evidence in action for necessities furnished defendant's wife, including disclosure that wife was separated from defendant, that she was ill and went to Virginia to visit her mother and to go to hospital and get medical attention established that \$175.38 airplane ticket paid for by plaintiff was a "necessity" for which plaintiff was entitled to recover from defendant.—Jarvis v. Jenkins, 417 S.W.2d 383.—Hus & W 232.3.

Tex.Civ.App.—Hous. [14 Dist.] 1972. Degree of "necessity" required to establish easement by implied grant is merely such as renders easement necessary for convenient and comfortable enjoyment of property as it existed when severance was made.—Westbrook v. Wright, 477 S.W.2d 663.—Ease 16.

Utah 1979. Where the legislature has conferred upon the court the duty of determining necessity of proposed taking, necessity must be established by evidence or the proceeding fails; "necessity" does not signify impossibility of constructing the improvement for which power has been granted without taking the land in question, but merely requires that land be reasonably suitable and useful for the improvement.—Williams v. Hyrum Gibbons & Sons Co., 602 P.2d 684.—Em Dom 56, 198(1).

Utah 1943. The words "convenience" and "necessity", within phrase "public convenience and necessity" within statute authorizing issuance of certificates to common motor carriers upon finding that public convenience and necessity require proposed service, are not segregable and constitute a joint concept which must be construed according to whole concept of the statute. Laws 1935, c. 65, § 6.—Union Pac. R. Co. v. Public Service Commission, 135 P.2d 915, 103 Utah 459.—Autos 83.

Vt. 1957. The "necessity" specified by statute for condemnation of land for highways does not mean an imperative or indispensable or absolute necessity, but only that the taking provided for be reasonably necessary for accomplishment of end in view under the particular circumstances. V.S. §§ 4971-4975.—Latchis v. State Highway Bd., 134 A.2d 191, 120 Vt. 120.—Em Dom 56.

Vt. 1942. Provision in quitclaim deed requiring grantees to keep filling station on premises open for certain hours on Sunday for the sale of the grantor's gasoline and petroleum products was void under statute providing that a person shall not between 12 o'clock Saturday night and 12 o'clock the following Sunday night exercise any secular

business or employment, except works of "necessity" and charity. P.L. 8706.—Jacobs v. Clark, 28 A.2d 369, 112 Vt. 484.—Sunday 7.

Vt. 1928. Statute prohibiting business or employment on Sunday except works of necessity or charity should be reasonably construed to include employment now considered necessary; "necessity". Laws 1921, No. 215.—State v. Corologos, 143 A. 284, 101 Vt. 300, 59 A.L.R. 1541.—Sunday 7.

Vt. 1928. Whether operation of candy shop and sale therein of ice cream and beverages constituted work of "necessity" held for jury in prosecution for violation of Sunday closing law. Laws 1921, No. 215.—State v. Corologos, 143 A. 284, 101 Vt. 300, 59 A.L.R. 1541.—Sunday 29(4).

Vt. 1887. "Necessity," as used in Laws 1884, c. 18, § 6, providing that a town assessed toward the maintenance of a highway in another town may be relieved from such assessment on proof that such highway is a necessity to any inhabitant of the town to which the assessment is paid, means the necessity for the use of any considerable portion of the highway for ordinary use; not an absolute necessity, but such a necessity as highways are ordinarily used for in the transaction of usual business.—Town of Wardsboro v. Town of Jamaica, 9 A. 11, 59 Vt. 514.

Va. 1985. As used in statutes regulating motor vehicle carriers, words in phrase "public convenience and necessity" are not semantically independent and distinct, but conceptually interrelated; word "convenience" modifies and qualifies literal import of word "necessity" and, considered contextually, the two words do not require showing of imperative need rooted in public hardship, and thus, in applying the statutory phrase, State Corporation Commission is entitled to consider public convenience as well as imbalance in supply and demand. Code 1950, §§ 56-338.50 et seq., 56-338.53, 56-338.54.—Abbott Bus Lines, Inc. v. Courtesy Bus Lines, Inc., 335 S.E.2d 818, 230 Va. 181.—Autos 78.

Va. 1959. In proceeding on appeal by county citizens from county board order for abandonment of sections of secondary roads, Supreme Court of Appeals would not adopt federal concept of term "public welfare" as term is used in statute which authorizes abandonment of roads if necessity does not exist for them or if public welfare would be best served by abandonment, but would adopt its own concept that "public welfare" has broader meaning than "necessity". Code 1950, § 33-76.8.—Smith v. Board of Sup'rs of Franklin County, 109 S.E.2d 501, 201 Va. 87.—High 79.1.

Va. 1958. As used in statute prohibiting condemnation of property for specified purposes unless the "necessity" therefor shall be shown to satisfaction of court, quoted word means reasonable and not absolute necessity. Code 1950, § 15-668.—Stanpark Realty Corp. v. City of Norfolk, 101 S.E.2d 527, 199 Va. 716.—Em Dom 56.

Va. 1958. The word "necessity" within statute authorizing erection of dam where it appears that a public necessity or an essential public convenience

will be served by erection of such dam does not denote an absolute, imperative or indispensable necessity, but means reasonable necessity. Code 1950, § 15-742.—Board of Sup'rs of Loudoun County v. Town of Fairfax, 101 S.E.2d 519, 199 Va. 612.—Waters 160.

Va. 1956. Under statute prohibiting laboring at any trade on a Sunday unless such is a work of necessity or charity, word "necessity" embraces all work reasonably essential to the economic, social or moral welfare of the people viewed in the light of the habits and customs of the age in which they live and of the community in which they reside. Code 1950, § 18-329.—Rich v. Com., 94 S.E.2d 549, 198 Va. 445.—Sunday 7.

Va. 1954. In the phrase "public convenience and necessity" the word "necessity" means that which is needful, essential, requisite or conducive to public convenience.—Atlantic Greyhound Corp. v. Com., 83 S.E.2d 379, 196 Va. 183.—Carr 8.

Va. 1952. The word "convenience", as connected with the word "necessity" in the phrase "public convenience and necessity" as applied to common carriers of passengers and freight by motor vehicle, is so connected, not as an additional requirement, but to modify and qualify what might otherwise be taken as the strict significance of the word "necessity," which, in fact means that which is needful, essential, requisite or conducive to public convenience. Code 1950, §§ 56-273 et seq., 56-278.—Seaboard Air Line R. Co. v. Com., 71 S.E.2d 146, 193 Va. 799.—Autos 77.

Va. 1942. While the word "necessity" within Sunday statute excepting a "work of necessity" is elastic and relative, and should be construed with reference to the conditions under which people live, the "elasticity" should not be extended so far as to cover that which is merely desirable and not reasonably essential. Code 1919, § 4570, as amended by Acts 1932, c. 328.—Francisco v. Com., 23 S.E.2d 234, 180 Va. 371.—Sunday 7.

Va. 1925. The "necessity" as applied to implied grants of rights of way, is not a physical or an absolute necessity, but a reasonable and practicable necessity.—Smith v. Virginia Iron, Coal & Coke Co., 129 S.E. 274, 143 Va. 159.—Ease 18(1).

Va. 1922. The necessity meant by the Sunday law and which is excepted from that law is not a physical necessity, but a moral fitness or propriety of the work and labor done under the circumstances of the particular case, and whether or not the act in question is morally fit and proper is usually a question of fact to be determined by a jury after hearing the testimony relevant to that particular act, and receiving proper instructions from the court, upon request, as to the proper interpretation of "necessity" as used in the statute.—Lakeside Inn Corporation v. Commonwealth, 114 S.E. 769, 134 Va. 696.—Sunday 7.

Va.App. 1998. "Necessity," for purposes of a carrier's application for certificate of public convenience, means reasonably necessary, and not absolutely imperative; a proposed service is necessary if

it appears reasonably requisite, and is suited to and tends to promote the accommodation of the public. Code 1950, §§ 46.2-2303, 46.2-2304.—Groome Transp., Inc. v. Virginia Dept. of Motor Vehicles, 500 S.E.2d 852, 27 Va.App. 682.—Autos 78.

Wash. 1972. Word "necessity," for eminent domain purposes, does not mean absolute, or indispensable, or immediate need, but rather its meaning is interwoven with concept of public use and embraces right of public to expect and demand service and facilities to be provided by a proposed acquisition or improvement.—Petition of Port of Seattle, 495 P.2d 327, 80 Wash.2d 392.—Em Dom 56.

Wash. 1968. Where trial court stated in its oral opinion that construction of marina by third-class city would be of substantial benefit to residents of city, despite its finding that 90% of space in proposed marina would be used by nonresidents, and that there were sufficient boat owners within ten-mile radius to make contemplated marina a likely success, trial court erred in refusing to enter a decree of "public use" and "necessity" in condemnation proceeding.—City of Des Moines v. Hemenway, 437 P.2d 171, 73 Wash.2d 130.—Em Dom 56.

Wash. 1962. The phrase "public use" is sufficiently broad to include an element of "necessity", and taking must be "necessary" even when it is county which seeks to condemn. Const. art. 1, § 16 as amended, amend. 9; RCWA 8.04.070, 8.08.040.—King County v. Theilman, 369 P.2d 503, 59 Wash.2d 586.—Em Dom 56.

Wash. 1949. Where divorced father's average monthly income was \$110 and his only other resources were \$800 savings, he would not be required on petition of former wife to increase child's support payments of \$35 a month to enable daughter to attend college and join sorority, since schooling beyond compulsory school attendance law was not a "necessity" when gauged by father's station in life.—Golay v. Golay, 210 P.2d 1022, 35 Wash.2d 122.—Child S 304, 339(5).

Wash. 1946. The "necessity" contemplated by statute relating to condemnation for private ways of necessity is a reasonable necessity under all the circumstances. Rem.Rev.Stat. § 936-1.—State ex rel. St. Paul & Tacoma Lumber Co. v. Dawson, 171 P.2d 189, 25 Wash.2d 499.—Em Dom 56.

Wash. 1931. Strict "necessity" is not test in determining whether certificate of "public convenience and necessity," authorizing motor passenger and express service, should be granted.—North Bend Stage Line v. Department of Public Works, 297 P. 780, 162 Wash. 46.—Autos 83.

Wash. 1929. Evidence sustained order of department of public works permitting extension of existing bus service to establish through route on ground of public convenience and "necessity". Rem.Comp.Stat. § 6390.—North Bend Stage Line v. Denney, 279 P. 752, 153 Wash. 439, affirmed 51 S.Ct. 348, 283 U.S. 786, 75 L.Ed. 1414.—Autos 83.

Wash. 1915. If the Attorney General and county attorneys are specifically made the legal repre-

sentatives of a board of medical examiners, there can be no implied power, on the ground of necessity, to hire private counsel, since such "necessity" must be a legal necessity, not an actual necessity.—*State v. Clausen*, 146 P. 630, 84 Wash. 279.

Wash. 1907. The word "necessary," as used in Ballinger's Ann.Codes & St. § 4335, providing that a corporation formed for the construction of a railroad shall have power to cross or join its railway with any other railway before constructed, and that, if the two corporations cannot agree as to the amount of compensation, it may be ascertained in the manner provided by law for the taking of lands necessary for the construction of its road, does not mean an absolute "necessity," or that there shall be no other place for the location of the road, but means a reasonable necessity, depending upon the circumstances of the particular case.—*State v. Superior Court of King County*, 90 P. 663, 46 Wash. 516.

Wash. 1903. The term "necessity," in the statute authorizing the condemnation of land in certain cases of necessity, is held not to mean an absolute and unconditional necessity as determined by physical causes, but a reasonable necessity under the circumstances of the particular case.—*Samish River Boom Co. v. Union Boom Co.*, 73 P. 670, 32 Wash. 586.

Wash. 1903. By the word "necessity," as it relates to the exemption of work of necessity on a day when work is forbidden, we are not to understand a physical and absolute necessity, but a moral fitness or propriety of the work done, under the circumstances of each particular case.—*State v. Lewis*, 72 P. 121, 31 Wash. 515.

Wash.App. Div. 1 1972. "Necessity," in eminent domain context, means reasonable necessity under circumstances of particular case; it does not mean absolute or indispensable or immediate need, but rather its meaning is interwoven with concept of public use and embraces right of public to expect and demand service and facilities to be provided by proposed acquisition or improvement.—*King County v. Farr*, 501 P.2d 612, 7 Wash.App. 600, review denied 81 Wash.2d 1009.—Em Dom 56.

Wis. 1957. The "necessity" required to support condemnation is only a reasonable, and not an absolute or imperative, necessity.—*Klump v. Cybulski*, 81 N.W.2d 42, 274 Wis. 604.—Em Dom 56.

Wis. 1929. "Necessity" for taking property under power of eminent domain does not mean absolute necessity, but reasonable necessity.—*Chicago & N.W. Ry. Co. v. City of Racine*, 227 N.W. 859, 200 Wis. 170.—Em Dom 56.

Wis. 1916. Under Laws 1911, c. 546, §§ 1, 2, providing for physical connection between competing telephone systems, when demanded by public convenience and necessity, the words "convenience" and "necessity" are not synonymous, but "necessity" must be taken as meaning only reasonable necessity.—*Wisconsin Telephone Co. v. Railroad Commission of Wisconsin*, 156 N.W. 614, 162 Wis. 383, L.R.A. 1916E,748.—Pub Ut 113.

Wis. 1916. The word "necessity" is relative rather than absolute, and its meaning in a given case must be ascertained by reference to the context and to the objects and purposes of the statute in which it is found. In statutes relating to regulation of public utilities it will be construed to mean not absolute but reasonable necessity.—*Wisconsin Telephone Co. v. Railroad Commission of Wisconsin*, 156 N.W. 614, 162 Wis. 383, L.R.A. 1916E,748.—Statut 184, 199, 208.

Wyo. 1945. In determining the "necessity" for creation of a power district, district court should construe necessity as meaning no more than expedience, convenience, or benefit to the public. W.C.S. 1945, §§ 62-101 et seq., 62-105.—*In re Sheridan County Power Dist.*, 157 P.2d 997, 61 Wyo. 365.—Electricity 1.5.

NECESSITY AND CONVENIENCE

Cal.App.1 Dist. 1984. Rule of "necessity and convenience" provides that the burden of proving an exonerating fact may be imposed on a defendant if its existence is peculiarly within his personal knowledge and proof of its nonexistence by the prosecution would be relatively difficult or inconvenient; such burden may not be unduly harsh or unfair.—*In re Andre R.*, 204 Cal.Rptr. 723, 158 Cal.App.3d 336.—Crim Law 330.

NECESSITY CALLING FOR ASSISTANCE

Pa. 1940. Where finance company instructed employee to repossess automobile and deliver it to used car dealer, and employee was not instructed to engage an assistant but did so and assistant drove automobile over curb into filling station, injuring attendant, finance company was not liable for injuries sustained by the attendant on ground that employee could not have been expected to drive both his own automobile and the one he was sent to repossess and that automobile failed to start, in absence of showing that employer knew that employee intended to use his automobile for such purpose or that some other means of transportation was not available, since the fact that it served employee's convenience to have assistant accompanying him was not "necessity calling for assistance", which would give employee implied authority to engage service of assistant.—*White v. Consumers Finance Service*, 15 A.2d 142, 339 Pa. 417.—Autos 193(4).

NECESSITY DEFENSE

N.D.Fla. 1994. "Necessity defense" or "justification defense" is affirmative defense that essentially excuses otherwise criminal conduct that is committed for purpose of preventing imminent greater harm.—*U.S. v. Hill*, 893 F.Supp. 1044.—Crim Law 38.

D.C. 1990. The "necessity defense" excuses criminal actions taken in response to exigent circumstances.—*Reale v. U.S.*, 573 A.2d 13.—Crim Law 38.

Hawai'i 1973. "Necessity defense" exonerates persons who committed crime under the pressure

of circumstances if the harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendant's breach of the law.—*State v. Marley*, 509 P.2d 1095, 54 Haw. 450.—Crim Law 38.

Idaho App. 1994. Common law "necessity defense" is recognized in Idaho; defense is based upon premise that illegal action should not be punished if act was committed in order to prevent greater harm.—*State v. Chisholm*, 882 P.2d 974, 126 Idaho 319, review denied.—Crim Law 38.

Ill.App.2 Dist. 1994. Defendant is entitled to have jury instructed on "necessity defense" when evidence, sufficient to raise reasonable doubt as to guilt, has been introduced that defendant, without blame in occasioning or developing situation, reasonably believed that his conduct, which would otherwise be offense, was necessary to avoid public or private injury greater than injury which might reasonably have resulted from his own conduct. Ill.Rev.Stat.1991, ch. 38, ¶ 7-13.—*People v. Cord*, 196 Ill.Dec. 476, 630 N.E.2d 173, 258 Ill.App.3d 188.—Crim Law 772(6).

Va.App. 1996. Common law "necessity defense" traditionally addresses dilemma created when physical forces beyond actor's control render illegal conduct the lesser of two evils.—*Long v. Com.*, 478 S.E.2d 324, 23 Va.App. 537.—Crim Law 38.

Va.App. 1996. Essential elements of common law "necessity defense" include reasonable belief that action was necessary to avoid imminent threatened harm, lack of other adequate means to avoid threatened harm, and direct causal relationship that may be reasonably anticipated between action taken and avoidance of harm.—*Long v. Com.*, 478 S.E.2d 324, 23 Va.App. 537.—Crim Law 38.

Va.App. 1996. In some sense, "necessity defense" allows jury to act as individual legislatures, amending particular criminal provision or crafting one-time exception to it, subject to court review, when real legislature would formally do same under those circumstances.—*Long v. Com.*, 478 S.E.2d 324, 23 Va.App. 537.—Crim Law 38.

NECESSITY EXCEPTION

S.D.Fla. 1995. Under the "necessity exception" to the ADA, public entities may utilize eligibility criteria that screen out, or tend to screen out, individuals with disabilities if the criteria are necessary to insure safe operation of the program or if the individual poses a direct threat to the health or safety of others. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.; 28 C.F.R. § 35.130(b)(8); Part 35, App. A.—*Doe v. Judicial Nominating Com'n for Fifteenth Judicial Circuit of Florida*, 906 F.Supp. 1534.—Civil R 107(1).

Ga.App. 1990. Witnesses' proposed testimony on behalf of surety on appearance bonds, that they had traveled to foreign country and been told that principal was dead, was not admissible under "necessity exception" to hearsay rule since it was not

shown that out-of-court declarants were unavailable to testify. (Per McMurray, P.J., with Chief Judge and Judge concurring specially.)—*Queen City Bonding Co. v. State*, 390 S.E.2d 654, 194 Ga.App. 436.—Evid 317(17).

NECESSITY FOR ADDITIONAL TRIPS

Ky. 1931. "Necessity for additional trips" warranting granting of certificate of public convenience and necessity does not exist unless scheduled trips do not take care of travel.—*Shorty's Bus Line v. Gibbs Bus Line*, 35 S.W.2d 868, 237 Ky. 494.—Autos 83.

Ky. 1931. To show that traveler could get to place and return from it more conveniently does not show "necessity for additional trips" warranting granting of certificate of public convenience and necessity.—*Shorty's Bus Line v. Gibbs Bus Line*, 35 S.W.2d 868, 237 Ky. 494.—Autos 83.

NECESSITY OF ANY CHANGE

Va. 1965. The term "necessity of any change" in statute permitting State Highway Commissioner to petition for invalidation of condemnation certificate on ground of necessity of any change therein does not limit right of commissioner to have certificate amended for mere errors and permits him to have certificate invalidated if he deems it necessary to change highway location and to withdraw proceedings at any time before order has been entered distributing funds deposited by virtue of certificate. Code 1950, § 33-70.7.—*Home Ins. Co. of New York v. Dalis*, 141 S.E.2d 721, 206 Va. 71.—Em Dom 246(2).

NECESSITY OF LIFE

Ala.App. 1922. The terms "necessity of life," when used without other definition, as in Acts 1919, p. 1088, relative to profiteering, is without any certainty or meaning, but varies according to the financial or social status of the individual, as well as according to time and place. (Response of Supreme Court to certified questions.)—*State v. Goldstein*, 93 So. 308, 207 Ala. 569, 18 Ala.App. 587.—Sales 48.5.

Ga. 1945. A passenger automobile sold to widowed share-cropper was not a "necessity of life" so as to make funds set aside to widow and her minor children as a year's support subject to execution for balance due on purchase price of the automobile. Ga.Code Ann. § 113-1002.—*Rimes v. Graham*, 34 S.E.2d 443, 199 Ga. 406.—Ex & Ad 200.

N.Y.Sup. 1944. The anti-monopoly law, making illegal any combination restraining or preventing competition or free exercise of any "activity", or the free pursuit of any "lawful business, trade, or occupation", relates to manufacture, production, and disposal of vendible personality and does not apply to purchase and sale of realty, since this is not a "necessity of life" nor does it constitute "trade" or "commerce" within the statute and purchase or sale of realty does not constitute a "commodity" or "article of commerce". General Business Law,

§ 340.—*Nasman v. Bank of N.Y.*, 49 N.Y.S.2d 181.—*Monop* 12(1.1).

Tex.Civ.App.—*Texarkana* 1972. A college or university education is a special advantage, not a “necessity of life,” within meaning of statute providing that each spouse has the duty to support his or her minor children, and that such support is for necessities, and voluntary payments by father of college education expenses for his son would not be such a change of conditions as would justify a reduction of support for father’s minor daughter. V.T.C.A., Family Code, § 4.02.—*Woodruff v. Woodruff*, 487 S.W.2d 791.—*Child* S 119, 236, 304.

NECESSITY OF PAYMENT

C.A.3 (Pa.) 1972. Under the “necessity of payment” exception to normal deferment of payment of prereorganization claims until their disposition can be made part of a plan of reorganization, courts may permit immediate payment of claims of creditors where those creditors will not supply services or material essential to conduct of business until their prereorganization claims have been paid. Bankr.Act, § 77, 11 U.S.C.A. § 205.—*In re Penn Cent. Transp. Co.*, 467 F.2d 100.—*Bankr* 3653.

Bkrtcy.D.Del. 1992. Debtor, a gas transmission company, was not equitably entitled to pay over customer refunds and Gas Research Institute surcharges, under “necessity of payment” doctrine, absent showing that payment was essential to continued operation of debtor. Bankr.Code, 11 U.S.C.A. §§ 105(a), 1108.—*Matter of Columbia Gas System, Inc.*, 136 B.R. 930.—*Bankr* 3027.

NECESSITY OF PAYMENT DOCTRINE

D.Del. 1999. Under the “necessity of payment doctrine,” court has equitable power to authorize payment of prepetition claims when such payment is necessary for debtor’s survival during Chapter 11. Bankr.Code, 11 U.S.C.A. § 105(a).—*In re Just For Feet, Inc.*, 242 B.R. 821.—*Bankr* 3027.

NECESSITY OF PAYMENT RULE

Bkrtcy.N.D.Tex. 2002. The “Necessity of Payment Rule,” also known as the “Doctrine of Necessity,” is a rule of payment not of priority; it allows trustees to pay prepetition debts in order to obtain continued supplies or services essential to the debtor’s reorganization. Bankr.Code, 11 U.S.C.A. § 105(a).—*In re CoServ, L.L.C.*, 273 B.R. 487.—*Bankr* 3621.

NECESSITY . . . OF PRIVATE ENFORCEMENT

Cal.App. 3 Dist. 1989. “Necessity . . . of private enforcement,” which is condition for award of attorney fees for enforcement of important right affecting public interest, has to do with absence of public enforcement, rather than causal relationship between efforts of private attorney general and success in lawsuit. West’s Ann.Cal.C.C.P. § 1021.5.—*City of Sacramento v. Drew*, 255 Cal. Rptr. 704, 207 Cal.App.3d 1287, rehearing denied, modified.—*Costs* 194.42.

NECESSITY OF THE CASE

Wash. 1941. Where surety alone appealed from judgment holding guardian and surety jointly and severally liable to ward for guardianship funds, under statute providing that nonappealing party whose interests are similarly affected by judgment appealed from should not derive any benefit from the appeal unless from the “necessity of the case”, the surety would not be denied relief because such relief would incidentally benefit guardian who did not join in the appeal, since the necessity of the case within meaning of statute was such that a benefit must be granted to the guardian. Rem. Rev.Stat. § 1720.—*In re LeFevre’s Guardianship*, 113 P.2d 1014, 9 Wash.2d 145.—*App & E* 836.

Wis. 1963. Failure of code to provide for a reply to an affirmative defense set up in answer does not create “necessity of the case” under which a plaintiff can rely on an estoppel without pleading it.—*Schneck v. Mutual Service Cas. Ins. Co.*, 119 N.W.2d 342, 18 Wis.2d 566.—*Plead* 165.

NECESSITY PRINCIPLE

Mo. 1945. The “necessity principle” signifies the impossibility of obtaining other evidence from the same source, the declarant being unavailable in person on the stand.—*Sutter v. Easterly*, 189 S.W.2d 284, 354 Mo. 282, 162 A.L.R. 437.

NECESSITY REQUIREMENT

C.A.9 (Cal.) 1986. “Necessity requirement” for court-ordered wiretap means that affidavit must set out factual background that shows that ordinary investigative procedures, employed in good faith, would likely be ineffective in particular case. 18 U.S.C.A. § 2518(1)(c).—*U.S. v. Brone*, 792 F.2d 1504.—*Tel* 516.

C.A.9 (Nev.) 1993. Under the “necessity requirement,” application for wiretap must contain full and complete statement as to whether other investigative procedures have been tried and failed or whether they reasonably appear unlikely to succeed if tried or to be too dangerous. 18 U.S.C.A. § 2518(1)(c).—*U.S. v. Khan*, 993 F.2d 1368, as amended.—*Tel* 516.

D.Colo. 1996. Requirement of federal wiretap statute that application for wiretap contain full and complete statements as to whether other investigative procedures had been tried and failed and why they reasonably appear to be unlikely to succeed if tried or to be too dangerous is the “necessity requirement”; question of whether government conducted wiretaps in such a way as to minimize interception of communications on subject to interception is the “minimization requirement.” 18 U.S.C.A. § 2518(1)(c), (5).—*U.S. v. Castillo-Garcia*, 920 F.Supp. 1537, affirmed in part, reversed in part 117 F.3d 1179, certiorari denied *Armendariz-Amaya v. U.S.*, 118 S.Ct. 395, 522 U.S. 962, 139 L.Ed.2d 309, certiorari denied *Avila v. U.S.*, 118 S.Ct. 428, 522 U.S. 974, 139 L.Ed.2d 328.—*Tel* 516, 520.

NECESSITY REQUIREMENT FOR WIRETAP

C.A.9 (Cal.) 1986. Affidavit in support of initial wiretap in California which stated that New York investigation of alleged narcotics ring indicated that defendant and his cohorts were wary, that even with assistance of five confidential informants and an undercover agent who had successfully infiltrated organization, federal agents had been unable to uncover defendant's source of narcotics or details of operations, and that physical surveillance of defendant had been unsuccessful and that pen registers and toll records did not disclose nature of business being transacted by telephone met "necessity requirement for wiretap." 18 U.S.C.A. § 2518(1)(c), (3)(c).—U.S. v. Brone, 792 F.2d 1504.—Tel 516.

NECESSITY RULE

Ga.App. 2001. "Necessity rule" applies in the context of a landlord-tenant relationship where the tenant is required to traverse a known hazard in order to enter or leave his home.—Martin v. Consolidated Stores Corp., 547 S.E.2d 380, 248 Ga. App. 812.—Land & Ten 168(1).

Ga.App. 2000. "Necessity rule" precludes summary judgment for a landlord based on tenant's knowledge of dangerous condition resulting in injury where the tenant had no alternative but to traverse a known hazard in order to enter or leave his home.—Johnson v. Atlanta Housing Authority, 532 S.E.2d 701, 243 Ga.App. 157.—Judgm 181(24).

NECESSITY STANDARD

N.D.Ill. 1988. Correct standard to apply in determining whether to grant relief from stay based on Chapter 11 debtor's lack of equity in property and lack of need of such property for effective reorganization, is "feasibility standard," under which court looks at whether debtor has reasonable possibility of successful reorganization in reasonable time, rather than "necessity standard," under which court looks at whether property is necessary for any possibility of reorganization. Bankr.Code, 11 U.S.C.A. § 362(a), (d)(2).—In re 8th Street Village Ltd. Partnership, 94 B.R. 993.—Bankr 2424, 2429(1).

NECKED DOWN

C.A.2 (N.Y.) 1967. Evidence including testimony of engineer that metal bars in concrete pipe had been "necked down," i. e., pulled from both ends so that they stretched out in length, shrunk in girth, and broke, supported finding that pipe laid by prime contractor seeking to recover repair costs had broken not because of improper design and planning by county and county water district but because of collapse of dike which prime contractor had built over the pipe.—W. L. Hailey & Co. v. Niagara County, 388 F.2d 746.—Counties 223; Waters 183.5.

NECKTIE

S.D.N.Y. 1944. A "necktie" is a scarf, band, or kerchief of silk, etc., passing around the neck or

collar and ties in front; a bow of silk, etc., fastened in front of the neck.—McCurrach v. Cheney Bros., 59 F.Supp. 234, affirmed in part, reversed in part 152 F.2d 365.

NECRO

Iowa 1942. Veterinarians testified "Necro" is a necrotic condition or thickening of the walls of the intestines. The disease is transmitted by hogs picking up the excreta of infected hogs. It is a disease of filth. The infection is around buildings and barn lots in dust and dirt. The incubation period of the bacteria is about 10 to 15 days. Some effects of the disease are loss of appetite, emaciation, enteritis, scouring and frequently death. There is no recognized cure for "Necro" known to the veterinary profession. Cleanliness and sanitation are essential to its treatment. The infection may spread among a high or low percentage of the hogs, depending somewhat upon the virulence of the term and the susceptibility of the animal.—Broer v. Dr. Fenton's Vigortone Co., 4 N.W.2d 416, 231 Iowa 1276.

NEED

U.S.Dist.Col. 1954. Under statute relating to rates for transportation of mail, and authorizing Civil Aeronautics Board, when determining rate to be allowed, to take into consideration the need of each such air carrier for compensation sufficient, together with all other revenue of the carrier, to maintain and continue development of air transportation, the "need" to be considered in fixing a subsidy rate is that of the carrier as a whole, and the term "all other revenue" includes nonflight income from incidental air carrier activities, which is to be considered in determining "the need" of the carrier for subsidy in view of its financial condition. Civil Aeronautics Act of 1938, § 406(b), 49 U.S.C.A. § 486(b).—Western Air Lines v. Summerfield, 74 S.Ct. 347, 347 U.S. 67, 98 L.Ed. 508, rehearing denied C a B v. Summerfield, 74 S.Ct. 512, 347 U.S. 924, 98 L.Ed. 1078, rehearing denied 74 S.Ct. 513, 347 U.S. 924, 98 L.Ed. 1078.—Aviation 103; Postal 21(4).

C.A.D.C. 1967. Civil Aeronautics Board's determination that "need" as used in statute covering establishment of compensation for carriage of mail by aircraft is need to survive through development period and not need to attain self-sufficiency with same kind of accrual reserves that conservative management might have tucked away in capital accounts during prosperous years was not improper. Federal Aviation Act of 1958, § 406, 49 U.S.C.A. § 1376.—Trans World Airlines, Inc. v. C. A. B., 385 F.2d 648, 128 U.S.App.D.C. 126, certiorari denied 88 S.Ct. 1029, 390 U.S. 944, 19 L.Ed.2d 1133.—Aviation 103.

C.A.D.C. 1967. With regard to equipment, what is covered by "need" to be considered in establishing compensation for carriage of mail by aircraft is "cost of retirement" of equipment which is original cost minus residual value. Federal Aviation Act of 1958, § 406, 49 U.S.C.A. § 1376.—Trans World Airlines, Inc. v. C. A. B., 385 F.2d 648, 128

U.S.App.D.C. 126, certiorari denied 88 S.Ct. 1029, 390 U.S. 944, 19 L.Ed.2d 1133.—Aviation 103.

C.A.D.C. 1953. The “need” contemplated by statute empowering Civil Aeronautics Board to take into consideration, when determining rates for transportation of mail by air, the need of each carrier for compensation sufficient, together with all other revenue of the air carrier, to maintain and continue the development of air transportation, is a net figure, representing that extra amount which appears necessary over and above that which the carrier has for the recited purpose, and it is not a gross figure from which offsets or deductions are to be made. Civil Aeronautics Act of 1938, § 406(a, b) as amended 49 U.S.C.A. § 486(a, b).—*Summerfield v. Civil Aeronautics Bd.*, 207 F.2d 200, 92 U.S.App. D.C. 248, certiorari granted *Western Air Lines v. Civil Aeronautics Board*, 74 S.Ct. 49, 346 U.S. 811, 98 L.Ed. 339, certiorari granted 74 S.Ct. 49, 346 U.S. 811, 98 L.Ed. 339, affirmed 74 S.Ct. 347, 347 U.S. 67, 98 L.Ed. 508, rehearing denied *C a B v. Summerfield*, 74 S.Ct. 512, 347 U.S. 924, 98 L.Ed. 1078, rehearing denied 74 S.Ct. 513, 347 U.S. 924, 98 L.Ed. 1078.—Aviation 103; Postal 21(4).

D.Mass. 1960. Under Massachusetts law, the words “comfort”, “support” and “maintenance” create an objective and limited standard for measuring the right of a beneficiary to invade the principal of the trust corpus, and the word “need” has an even narrower and more explicit meaning, which is, want of means of subsistence and necessity.—*Pittsfield Nat. Bank v. U.S.*, 181 F.Supp. 851.—Trusts 276.

D.Mass. 1941. Where will making bequests to charities provided that testator’s wife might invade corpus of trust to extent that she ‘may at any time and from time to time need or desire,’ value of gift to charities was not known or ascertainable on date of decedent’s death and hence was not deductible from gross estate for estate tax purposes, even though wife’s own property at date of husband’s death had fair valuation of approximately \$190,000, since words “need” and ‘desire’ as used in will were not synonymous; the ordinary meaning of the word ‘desire’ being request or wish.—*Gammons v. Hassett*, 36 F.Supp. 529, affirmed 121 F.2d 229, certiorari denied 62 S.Ct. 136, 314 U.S. 673, 86 L.Ed. 539.—Int Rev 4172(5).

S.D.N.Y. 1995. As a general rule, defendant does not “need,” for purposes of determining whether bill of particulars is warranted, detailed evidence about conspiracy in order to prepare for trial; accordingly, details as to how and when conspiracy was formed or as to when each participant entered it need not be revealed before trial.—*U.S. v. Strawberry*, 892 F.Supp. 519.—Ind & Inf 121.1(7).

E.D.Va. 1952. The “need” contemplated in statutory provision that to enable provision of service for which there is immediate and urgent need to a point or within a territory having no carrier service capable of meeting such need, Interstate Commerce Commission may grant temporary authority for such service by common carrier or con-

tract carrier by water, need not be an emergency, and Congress meant simply a present and pressing demand for water-transportation. Interstate Commerce Act, § 311(a), 49 U.S.C.A. § 911(a).—*Alabama Great Southern R. Co. v. U.S.*, 103 F.Supp. 223.—Commerce 85.34.

Cal.App. 1 Dist. 1990. Trial court did not abuse its discretion in concluding that former wife did not have “need” for attorney’s fees, and thus properly denied award under statute providing that trial court is authorized to award attorney’s fees in family law cases as may be reasonably necessary for cost of maintaining or defending the proceeding, where wife stipulated that she had ability to pay her own attorney’s fees, even though wife alleged that she would be forced to exhaust her liquid assets when paying fees, but husband, who was far wealthier, had ability to pay her attorney’s fees without affecting his financial security or lifestyle. West’s Ann.Cal.Civ.Code § 4370(a).—*In re Marriage of Joseph*, 266 Cal.Rptr. 548, 217 Cal.App.3d 1277, review denied.—Divorce 225.

Cal.App. 2 Dist. 1997. In assessing, under pertinent section of Family Code, one party’s relative “need” and other party’s ability to pay for award of attorney fees incurred after entry of judgment of divorce, trial court may consider all evidence concerning parties’ current incomes, assets, and abilities, including investment and income-producing properties, and, thus, disparity in parties’ respective circumstances may itself demonstrate relative “need,” even though applicant spouse admittedly has funds to pay his or her fees. West’s Ann.Cal. Fam.Code § 2032.—*In re Marriage of Drake*, 62 Cal.Rptr.2d 466, 53 Cal.App.4th 1139, as modified, and review denied.—Divorce 225.

Conn. 1889. Where a mother devised her estate in trust during the lives of her husband and son, and during the minority of any of the son’s children, and the trustee was to pay to the husband so much of the income and principal as he might “require” for his own personal use, to be paid on the husband’s written request, the word “require” should be construed to mean “need” or “shall be requisite,” and not to mean that the husband might demand or claim as of right and by authority whatever he chose.—*Hull v. Holloway*, 20 A. 445, 58 Conn. 210.

Ga. 1990. “Need,” as used in testamentary language authorizing encroachment should trust income be insufficient “to meet any reasonable need” of beneficiary, refers to beneficiary’s health, maintenance, and support consistent with beneficiary’s accustomed manner of living, but may include other areas if specific provision is made therefor in will.—*Wright v. Trust Co. Bank of Northwest Georgia*, 396 S.E.2d 213, 260 Ga. 414.—Wills 684.10(3.1), 684.10(4).

Ill. 1908. A request for bids for coal for a city asked for coal to be delivered “as needed” and also as fast as “required.” The bids offered to deliver at such times and in such quantities as the city might direct, and the body of the contract stated in one place that the coal should be delivered prompt-

ly "as ordered," and in another, that on failure to make delivery "as ordered," the city might either forfeit the contract or buy coal at the contractor's expense in the open market. *Held*, that the words "order" and "direct" should be construed as synonymous with the word "require," and that the word "require" was used as the substantial equivalent of "need."—*McLean County Coal Co. v. City of Bloomington*, 84 N.E. 624, 234 Ill. 90.—*Mun Corp* 240.

La.App. 4 Cir. 1971. It is the style, or standard of living, enjoyed by wife while living with husband, and not her standard of living prior to marriage, which is determinative of the wife's "need" for alimony pendente lite under statute governing allowance of sum to wife pending suit for separation or for divorce proportionate to her needs and to means of her husband. LSA—C.C. art. 148.—*Cabral v. Cabral*, 245 So.2d 718.—*Divorce* 215.

Md.App. 1998. For purposes of special exceptions, "need" means expedient, reasonably convenient, and useful to the public, rather than an absolute necessity; term is elastic and relative, infusing designated local government decision-maker with degree of discretion, not unfettered or to be arbitrarily exercised, in interpreting and applying facts of each case to this requirement. *Baltimore County, Md., Zoning Regulations* § 411.1.—*Friends of the Ridge v. Baltimore Gas and Elec. Co.*, 707 A.2d 866, 120 Md.App. 444, certiorari granted *Friends of Ridge v. BG&E*, 713 A.2d 980, 350 Md. 488, vacated 724 A.2d 34, 352 Md. 645.—*Zoning* 488, 489.

Mass. 1937. Deed whereby aged sister as life tenant under brother's will conveyed "home place" on condition that grantees should make home for her held not proper exercise of power of sale or disposal given sister in case of "need," and therefore grantees under sister's deed acquired no title as against remainderman named in will.—*Lincoln v. Willard*, 6 N.E.2d 774, 296 Mass. 549.—*Wills* 692(2).

Mass. 1909. The word "need," as used therein, imports something different from mere desire for payment of a specified sum at a specified time, the main purpose being to preserve legacies till beneficiaries attain majority, and advancements may be made from time to time as sound judgment and wise discretion may dictate, in light of all attendant circumstances.—*Smith v. Haynes*, 89 N.E. 158, 202 Mass. 531.—*Wills* 733(3).

Miss. 1939. Under Louisiana statute providing that children are bound to maintain their father and mother and other ascendants who are in "need," daughter-in-law of deceased Louisiana resident was not precluded from recovery on claim against estate for board and lodging, laundry, etc., furnished Louisiana resident on ground that husband had duty to support decedent where decedent owned property sufficient for her support and was not in any legal sense in "need." Rev.Civ. Code La. art. 229.—*Lee v. Lee's Estate*, 191 So. 661, 186 Miss. 636.—*Ex & Ad* 206(1).

Miss. 1939. The term "need" within Louisiana statute providing that children are bound to maintain their father and mother and other ascendants who are in "need" carries meaning that persons in "need" are unable to support themselves and have not sufficient property for that purpose. Rev.Civ. Code La. art. 229.—*Lee v. Lee's Estate*, 191 So. 661, 186 Miss. 636.—*Paupers* 37(1).

Miss. 1939. A Louisiana statute relating to duty of children to maintain ascendants who are in "need" did not control on question of liability of estate of decedent who was resident of Louisiana to daughter-in-law on claim for board, lodging, laundry, etc., furnished decedent where decedent had home and farm in Mississippi, since residence in Louisiana did not necessarily deprive decedent of homestead rights in Mississippi. Rev.Civ.Code La. art. 229.—*Lee v. Lee's Estate*, 191 So. 661, 186 Miss. 636.—*Paupers* 40.

Mo. 1942. The word "need" as used in statute requiring denial of old age assistance if the applicant is not found to be in "need" means a condition requiring supply or relief, urgent exigency, want of means of subsistence, poverty, indigence, and destitution, and "needy" means distressed by want of means of living, or poverty-stricken or indigent, necessitous, very poor. V.A.M.S. § 208.010.—*Nichols v. State Social Security Com'n of Missouri*, 164 S.W.2d 278, 349 Mo. 1148.—*Social S* 177.

Mo.App. 1941. Evidence held sufficient to justify State Social Security Commission's finding that applicant for old age assistance had sufficient income, resources, support and maintenance to provide reasonable subsistence compatible with decency and health and hence was not in "need" within meaning of State Social Security Act. V.A.M.S. § 208.010 and subd. (6).—*Hughes v. State Social Security Com'n*, 157 S.W.2d 223.—*Social S* 178.

Mo.App. 1941. It is not within province of Court of Appeals to disturb State Social Security Commission's finding, justified by sufficient substantial evidence, that applicant for old age assistance had sufficient income, resources, support and maintenance to provide reasonable subsistence compatible with decency and health and hence was not in "need" within meaning of State Social Security Act. V.A.M.S. § 208.010(6).—*Hughes v. State Social Security Com'n*, 157 S.W.2d 223.—*Social S* 178.

N.J. 1971. "Need" within statute authorizing issuance of a permit to carry a handgun on a showing of need is a flexible term which must be read and applied in light of particular circumstances and times. N.J.S.A. 2A:151-44.—*Siccardi v. State*, 284 A.2d 533, 59 N.J. 545, 51 A.L.R.3d 494.—*Weap* 3.

N.J.Super.L. 1989. Medical "need" is shown, for purposes of no-fault act sections providing for payment of all reasonable medical expenses incurred as result of personal injury sustained in automobile accident, if treating physician orders tests based upon sincere belief that procedure, even if controversial, will further diagnosis, or treatment, of patient's condition. N.J.S.A. 39:6A-2, subd. e, 39:6A-4, subd. a.—*Cavagnaro v. Hanover Ins. Co.*,

Inc., 565 A.2d 728, 236 N.J.Super. 287.—Insurance 2831(1).

N.J.Ch. 1911. Where a clause in a will directed the trustees to pay the testator's wife out of the income of his estate during her natural life, and at suitable periods, such sums of money that she should "want or require" for her comfortable maintenance, and, during the minority of his children, for the support, maintenance, and education of such children also, the power and duty of deciding upon the amount wanted or required for the support and maintenance of the widow and minor children was intended to be upon the executors as trustees rather than upon the widow so that the words "want or require" are an expression of necessity, equivalent to "need," and not to "wish or desire."—Coffin v. Watson, 79 A. 275, 78 N.J.Eq. 307, affirmed 83 A. 1118, 79 N.J.Eq. 643.

N.Y.Sup. 1912. Testator bequeathed property to a graduate association of Cornell University, to be used by it "in aiding and assisting needy young women students at said Cornell University as in the judgment of the officers and directors of the association may seem best and proper." Held, that the word "needy" was used as an adjective, from the noun "need," defined as urgent want or necessity, and that, construed with the words "aiding and assisting," it indicated a charitable and benevolent purpose, educational in character, and as such enforceable.—Sawyer v. Dearstyne, 139 N.Y.S. 955.

N.Y.Sur. 1937. "Need" is a wholly relative term, the conception of which must, within reasonable limits, vary with the personal situation of the individual employing it.—In re Skuse's Estate, 1 N.Y.S.2d 202, 165 Misc. 554.

N.D. 1980. Intention of Legislature when it used term "need" in statute governing establishment of new banks was to require State Banking Board to look at all available factors in determining whether another banking facility was needed for a given trade area, which factors are to be viewed in light of general purposes of banking regulations, and Legislature did not intend that an applicant for a new bank charter show an absolute necessity for a new banking facility in a given area. NDCC 6-02-06.—American State Bank of Williston v. State Banking Bd., 289 N.W.2d 222.—Banks 6.

N.D. 1980. Construing term "need" as used in banking statute as something akin to "absolute necessity" would foster monopolies for existing banks and prevent the kind of healthy competition in banking services that is so much in the public interest. NDCC 6-02-06.—American State Bank of Williston v. State Banking Bd., 289 N.W.2d 222.—Banks 6.

Ohio App. 3 Dist. 1994. Wife had sufficient "need" for spousal support to justify award of \$600 per month, though trial court found that she was self-supporting and was capable of living well within her current income of approximately \$32,000 per year, where wife was planning on spending great deal of money and time to give herself education which would fulfill requirements of her present job.

R.C. § 3105.18(C)(1).—Adams v. Adams, 642 N.E.2d 677, 95 Ohio App.3d 419.—Divorce 240(2).

Okla. 1975. "Need" as used in statute governing application to establish and operate a building and loan association, is community or public need in light of the elements concerning which information is to be furnished and the accompanying requirement of financial stability. 18 O.S.1971, §§ 381.18, 381.19.—Stillwater Sav. and Loan Ass'n v. Oklahoma Sav. and Loan Bd., 534 P.2d 9, 1975 OK 50.—B & L Assoc 3.1(1).

Or. 1997. "Need" contemplated by statute directing that notice of agency's intent to adopt, amend, or repeal a rule include a "statement of need for the rule and a statement of how the rule is intended to meet that need" is a need that rule-proposing agency perceives. ORS 183.335(2)(b)(C).—Fremont Lumber Co. v. Energy Facility Siting Council, 936 P.2d 968, 325 Or. 256.—Admin Law 405.

Or. 1981. For purposes of determining child support, "need" is that amount which is required for the actual necessary expenses of providing for child at standard of living which would have been enjoyed but for dissolution and all circumstances of the parties must be considered. ORS 107.105(1)(b), 107.108.—Smith v. Smith, 626 P.2d 342, 290 Or. 675.—Child S 100.

Or.App. 1979. Mere market demand for rural residential development did not constitute a "need" for it for purposes of the exception to applicability of statewide planning goal, which mandated preservation of agricultural land for agricultural use, if it was not possible to apply an appropriate goal to specific parcel of land.—Still v. Board of County Com'rs of Marion County, 600 P.2d 433, 42 Or. App. 115, review denied 288 Or. 493.—Zoning 279.

Tex.App.—Fort Worth 2002. "Need" element of good faith test for official immunity refers to the urgency of the circumstances or the seriousness of the situation to which the officer responds, whether the officer's immediate presence is necessary to prevent injury or loss of life, and what alternative courses of action, if any, are available to achieve a comparable result.—Hayes v. Patrick, 71 S.W.3d 516.—Offic 114.

Tex.App.—Fort Worth 1999. Under the need-risk balancing test to determine if police officer acted in good faith, as required for official immunity in police emergency response case, "need" refers to the urgency of the circumstances requiring police intervention, and is determined by factors such as the seriousness of the crime or accident to which the officer responds, whether the officer's immediate presence is necessary to prevent injury or loss of life or to apprehend a suspect, and what alternative courses of action, if any, are available to achieve a comparable result.—Hale v. Pena, 991 S.W.2d 942, rehearing overruled.—Mun Corp 747(3).

Tex.App.—Dallas 2000. "Good faith" of a police officer for official immunity purposes depends on how a reasonably prudent officer could have assessed both the need to which an officer responds

and the risks of the officer's course of action, based on the officer's perception of the facts at the time of the event, and the "need" aspect of the test refers to the urgency of the circumstances requiring police intervention, whereas the "risk" aspect of good faith refers to the countervailing public safety concerns and is determined by the nature and severity of harm that the officer's actions could cause, the likelihood that any harm would occur, and whether any risk of harm would be clear to a reasonably prudent officer.—*Clement v. City of Plano*, 26 S.W.3d 544.—*Mun Corp* 747(3).

Tex.App.—Houston [14 Dist.] 2000. For purposes of claiming official immunity as an affirmative defense to an officer's action, the "need" aspect of the test for good faith is determined by factors such as the seriousness of the crime to which the officer responds, whether the officer's immediate presence is necessary to prevent injury or loss of life or to apprehend a suspect, and what alternative courses of action, if any, are available to achieve a comparable result.—*Tennell v. Telthorster*, 84 S.W.3d 1, rehearing overruled, and review granted, reversed 92 S.W.3d 457.—*Offic* 114.

Wash.App. Div. 1 1971. "Need" of one spouse which will justify order that other spouse pay attorney fees in divorce proceeding does not necessarily mean destitution or poverty but does mean an absence of funds and the lack of ability to get them without extreme hardship.—*Coons v. Coons*, 491 P.2d 1333, 6 Wash.App. 123.—*Divorce* 224.

Wash.App. Div. 1 1969. "Need" of one spouse which will justify order that other spouse pay attorney fees in divorce proceeding does not necessarily mean destitution or poverty but does mean an absence of funds and lack of ability to get them without extreme hardship.—*Johnson v. Johnson*, 462 P.2d 956, 1 Wash.App. 527.—*Divorce* 224.

NEED AND ATTENDANCE

D.Mass. 1969. Provision of National School Lunch Act requiring state educational agencies to take into account "need and attendance" in determining eligibility for participation does not mean that agencies must select schools in areas of economic need before they may select any other schools. National School Lunch Act, § 8, 42 U.S.C.A. § 1757.—*Briggs v. Kerrigan*, 307 F.Supp. 295, affirmed 431 F.2d 967, 14 A.L.R. Fed. 629.—*Agric* 2.7; *Schools* 19(1).

NEED BE

N.D. 1933. Provision that only one warehouse bond "need be" given for line of elevators under same control or operation does not preclude Railroad Commissioners from requiring bond for each warehouse. *Laws* 1927, c. 155, § 10.—*State ex rel. Larkin v. Wheat Growers' Warehouse Co.*, 249 N.W. 718, 63 N.D. 641.—*Wareh* 18.

NEEDED

C.A.9 (Alaska) 1981. The 22½ acres containing watershed area for spring was "needed," within meaning of statute permitting one in possession of

public land in Alaska to purchase land "needed" in prosecution of productive industry, even though no actual construction or activity was planned on the tract, where slaughterhouse operator sought the property to prevent contamination of spring necessary to operation of slaughterhouse, and thus the operator was entitled to purchase the land. 43 U.S.C.A. § 687a; 48 U.S.C.A. § 461.—*Schade v. Andrus*, 638 F.2d 122.—*Pub Lands* 142.2.

Cal.App. 2 Dist. 1975. Evidence that action of city in closing a street near the city's boundary with an adjacent city served to promote the health, safety and general welfare of the residents in the residential area in which the street lay and was reasonably necessary to facilitate the flow of traffic since the street was not suited to bear the burden of through traffic sustained finding that the street was not "needed" for vehicular traffic, especially where two streets approximately one and one-half miles to the northeast could be used for that purpose without undue inconvenience, so that the action of the city came within statute authorizing city to close any highway which is no longer "needed." West's Ann.Vehicle Code, § 21101(a).—*Snyder v. City of South Pasadena*, 126 Cal.Rptr. 320, 53 Cal.App.3d 1051.—*Mun Corp* 657(5).

Conn. 1953. Where bonded contracts provided that oil should be delivered to buyer as "required," word "required" meant "demanded" and not "needed," and in determining liability of indemnity company under contract performance bonds, on bankruptcy of seller, oil considered by buyer and seller as delivered under unbonded contracts would not be considered oil delivered under bonded contracts.—*Krall Coal Co. v. Century Indem. Co.*, 96 A.2d 311, 139 Conn. 634.—*Princ & S* 66(1); *Sales* 81(5).

La.App. 2 Cir. 1973. Right-of-way for natural gas pipeline to be constructed by corporate public utility, which engaged in developing and transmitting electricity, for purpose of bringing to utility's generating plant needed natural gas essential to utility's development of electricity was property "needed" by utility for purpose of developing and transmitting electricity within statute providing that if price cannot be agreed on with owner, corporation created for purposes of developing and transmitting electricity may expropriate needed property. LSA-R.S. 19:1 et seq., 19:2.—*Southwestern Elec. Power Co. v. Conger*, 280 So.2d 254, writ denied 281 So.2d 759.—*Em Dom* 56.

NEEDED FOR ACTUAL CONSTRUCTION

Mass. 1953. Not only the work portion of road-way, including bridges, abutment, embankments and approaches, but also garages, gasoline stations and restaurants, and a reasonable amount of land taken or acquired on which to place them are "needed for actual construction" of the highway and are parts of it, and land taken for such purposes will not be "more land than needed" for actual construction of the highway within constitutional amendment limiting exercise of power of "eminent domain". St.1952, c. 354, § 1 et seq.;

Const. pt. 1, art. 10.—Opinion of the Justices, 113 N.E.2d 452, 330 Mass. 713.—Em Dom 58.

Mass. 1953. The power granted turnpike authority to take abutting property to preserve and protect the turnpike is not a grant of power to take more land than is "needed for actual construction" of the highway as quoted words are used in constitutional amendment relating to exercise of power of eminent domain. St.1952, c. 354, § 5(k); Const. pt. 1, art. 10.—Opinion of the Justices, 113 N.E.2d 452, 330 Mass. 713.—Em Dom 58.

NEEDED IN ORDER TO APPLY FOR OR ACCEPT EMPLOYMENT OR TRAINING

Pa.Cmwth. 1979. Petitioner's beauty academy uniform, pair of shoes and enrollment fee were "needed in order to apply for or accept * * * training" within meaning of regulation stating that "a nonrecurring one-time grant may be authorized for an allowance to meet the actual minimum cost * * * for any of the following items provided an individual shows that these items are "needed in order to apply for or accept employment or training" which will result in decreasing or preventing his need for assistance * * *," though petitioner commenced her training at beauty academy before she requested a grant for such items.—Rodgers v. Com., Dept. of Public Welfare, 405 A.2d 1068, 45 Pa.Cmwth. 574.—Social S 9.1.

NEEDED OR USED BY PUBLIC

Tex.Com.App. 1930. Ice held within contemplation of statute authorizing home-rule city to manufacture anything "needed or used by public". Vernon's Ann.Civ.St. arts. 1176, 1175, subd. 14.—City of Denton v. Denton Home Ice Co., 27 S.W.2d 119, 119 Tex. 193, 68 A.L.R. 866.—Mun Corp 267.

NEEDED REPAIRS

Neb. 1912. If one county resolves upon such a course, and proceeds to replace three wooden spans with steel at three times the cost necessary to rebuild them as originally constructed there being seven or eight times that many spans in the entire bridge, it cannot recover from the other county as for "needed repairs."—Platte County v. Butler County, 135 N.W. 439, 91 Neb. 132.

NEEDED TO MAINTAIN THE SCHOOLS

N.C.App. 1977. Phrase "needed to maintain the schools" in statutes relating to preparation and adoption of local school budgets should not be construed so narrowly as to mean that which is indispensable. G.S. §§ 115-87, 115-88.—Wilson County Bd. of Ed. v. Wilson County Bd. of Com'rs, 231 S.E.2d 15, 32 N.C.App. 13.—Schools 92(3).

NEED FOR AN IMMEDIATE SEARCH

Mich.App. 1968. The "need for an immediate search" of a vehicle will be found in those situations where defendant might be able to reach a concealed weapon, or to destroy evidence, or to drive away before a warrant could be obtained.—

People v. Dombrowski, 159 N.W.2d 336, 10 Mich. App. 445.—Searches 64.

NEED FOR PROTECTION

Mo. 1940. In action against railroad company for injuries to passenger in automobile colliding with defendant's train at highway crossing, a letter from defendant's president, acknowledging receipt of copy of village trustees' resolution, which recited that crossing had become extremely hazardous and dangerous and that five collisions had occurred thereat within year and directed village president and attorney to take steps necessary to protect public, was not admission that crossing was extra hazardous and unusually dangerous, that defendant knew of hazardous conditions or was negligent with reference to crossing, nor that additional protection was required thereat, especially as "need for protection" ordinarily means need of methods or means of warning traveling public of trains' approach over crossing.—Dimond v. Terminal R. Ass'n of St. Louis, 141 S.W.2d 789, 346 Mo. 333.—Evid 244(15).

NEED FOR RELIEF

U.S.N.Y. 1942. Where a prior proceeding is pending at time proceeding for corporate reorganization is filed, corporation's showing of "need for relief" in petition for reorganization must demonstrate that at least in some substantial particular the prior proceedings withhold or deny creditors or stockholders benefits, advantages or protections which reorganization provisions afford, and in absence of such a showing, the need for relief has not been established, and the district court is not enabled to make an informed judgment on issue whether petition is filed in "good faith." Bankr. Act §§ 130(7), 141, 146(4), 11 U.S.C.A. §§ 530(7), 541, 546(4).—Marine Harbor Properties v. Manufacturer's Trust Co., 63 S.Ct. 93, 317 U.S. 78, 87 L.Ed. 64, rehearing denied 63 S.Ct. 254, 317 U.S. 710, 87 L.Ed. 566.—Bankr 2252.1.

U.S.N.Y. 1942. All petitions for corporate reorganization whether filed by debtor or others must show "need for relief" under the reorganization provisions of the Bankruptcy Act and in every case the bankruptcy court must be satisfied that the petition has been filed in "good faith." Bankr. Act §§ 130, 131, 141-144, 11 U.S.C.A. §§ 530, 531, 541-544.—Marine Harbor Properties v. Manufacturer's Trust Co., 63 S.Ct. 93, 317 U.S. 78, 87 L.Ed. 64, rehearing denied 63 S.Ct. 254, 317 U.S. 710, 87 L.Ed. 566.—Bankr 2284.

U.S.N.Y. 1942. Where corporate debtor's property was worth less than amount of indebtedness secured by first mortgage which was being foreclosed in state court and there was no suggestion that stockholders desired to make contribution necessary to entitle them to participate in reorganization plan, and that unless they were allowed to do so they would be barred, mere showing that if creditors desired liquidation of claims on basis of actual values rather than on face amount of claims, certain cash could be raised, did not establish on behalf of stockholders "need for relief" which reorganization

provisions of Bankruptcy Act, read in light of other provisions regarding "good faith", require. Bankr. Act §§ 130(7), 141, 146(4), 11 U.S.C.A. §§ 530(7), 541, 546(4).—*Marine Harbor Properties v. Manufacturer's Trust Co.*, 63 S.Ct. 93, 317 U.S. 78, 87 L.Ed. 64, rehearing denied 63 S.Ct. 254, 317 U.S. 710, 87 L.Ed. 566.—Bankr 2252.1, 2264(1).

U.S.N.Y. 1942. Where corporate debtor's property was worth less than first mortgage indebtedness so that continuance of state court foreclosure proceedings would not deny junior creditors any benefits which corporate reorganization proceedings would afford them, petition for reorganization could not be approved on ground that as to junior creditors petition showed "need for relief" and was filed in "good faith". Bankr. Act §§ 130(7), 141, 146(4), 11 U.S.C.A. §§ 530(7), 541, 546(4).—*Marine Harbor Properties v. Manufacturer's Trust Co.*, 63 S.Ct. 93, 317 U.S. 78, 87 L.Ed. 64, rehearing denied 63 S.Ct. 254, 317 U.S. 710, 87 L.Ed. 566.—Bankr 2252.1.

U.S.N.Y. 1942. Where foreclosure proceeding was brought in state court on behalf of mortgage certificate holders alone, and there was no showing that foreclosure proceedings were conducted so as to jeopardize interests of the certificate holders, petition for corporate reorganization could not be approved on ground that as to certificate holders petition showed "need for relief" and was filed in "good faith". Bankr. Act §§ 130(7), 141, 146(4), 11 U.S.C.A. §§ 530(7), 541, 546(4).—*Marine Harbor Properties v. Manufacturer's Trust Co.*, 63 S.Ct. 93, 317 U.S. 78, 87 L.Ed. 64, rehearing denied 63 S.Ct. 254, 317 U.S. 710, 87 L.Ed. 566.—Bankr 2252.1.

U.S.N.Y. 1942. In determining whether corporate debtor which filed petition for reorganization sustained burden of showing a "need for relief" under reorganization provisions of Bankruptcy Act, and that petition was filed in "good faith", the bankruptcy court was not warranted in assuming that New York state foreclosure proceeding instituted for and on behalf of first mortgage creditors exclusively, was inadequate measured by the standards set up by the Bankruptcy Act, to protect the interests of the creditors. McK.Unconsol.Laws § 4801 et seq., and § 4871 et seq., Bankr. Act §§ 130(7), 141, 146(4), 221(2), 11 U.S.C.A. §§ 530(7), 541, 546(4), 621(2).—*Marine Harbor Properties v. Manufacturer's Trust Co.*, 63 S.Ct. 93, 317 U.S. 78, 87 L.Ed. 64, rehearing denied 63 S.Ct. 254, 317 U.S. 710, 87 L.Ed. 566.—Bankr 2252.1, 2264(1).

NEED FOR SERVICES

Md. 1968. Term "need for services" as used in zoning law does not mean absolute necessity but is elastic and relative.—*Neuman v. City of Baltimore*, 246 A.2d 583, 251 Md. 92.—Zoning 233.

Pa. 1960. Under statutes creating and assigning duties to Department of Banking, and providing that a bank can, with prior written approval of Department, establish a branch in same city where there is a need for services or facilities such as are contemplated by the establishment of such branch,

the "need for services" referred to means paramountly the need of the community to be served for the proposed branch services or facilities, rather than the need of a particular bank for a branch to convenience and better service its present and future depositors and customers. 7 P.S. §§ 819–14, 819–204.1, subd. B; 71 P.S. § 733–202, subd. A.—*Dauphin Deposit Trust Co. v. Myers*, 164 A.2d 86, 401 Pa. 230.—Banks 33.

NEEDFUL

C.A.9 (Wash.) 1948. The statute empowering Secretary of the Treasury to make all "needful" rules and regulations for carrying out provisions of statutes dealing with narcotics authorized regulation promulgated by Commissioner of Narcotics and Commissioner of Internal Revenue, with approval of Secretary of Treasury, requiring that all prescriptions for drugs shall bear the full name and address of the patient. 26 U.S.C.A. §§ 2559, 2606.—*Lewis v. U.S.*, 170 F.2d 43.—Int Rev 5259.

Conn. 1946. The word "needful" as used in New Britain charter provision giving cemetery committee authority to make all needful rules and regulations has no absolute connotation but is relative, implying the want of something which is to be determined in view of the particular circumstances involved. 14 Sp.Acts 1905, p. 963, § 123; Gen.St. 1930, § 2981.—*A. W. Carlson, Inc. v. Judd*, 48 A.2d 269, 133 Conn. 74.—Cem 1.

Conn. 1946. "Needful," when used in a statute and as distinguished from "necessary," "requisite" and like words, carries the weakest suggestion of urgency but it applies to that which is required to supply a want or fill a need.—*A. W. Carlson, Inc. v. Judd*, 48 A.2d 269, 133 Conn. 74.—Statut 199.

N.J.Super.L. 1969. The word "needful" in statute providing that Board of Utility Commissioners may make all needful rules for its government and other proceedings means necessary to accomplish a public protective purpose only. N.J.S.A. 48:2–12.—*Bzozowski v. Pennsylvania-Reading Seashore Lines*, 259 A.2d 231, 107 N.J.Super. 467.—Pub Ut 149.

N.M. 1940. Juvenile delinquent home authorized by statute in first-class counties is a "necessary public building" within constitutional provision prohibiting borrowing by counties except for erecting necessary public buildings, the word "necessary" not being used as meaning indispensable but rather as being synonymous with "needful." Laws 1939, c. 75, § 1; Const. art. 9, § 10.—*Hutcheson v. Atherton*, 99 P.2d 462, 44 N.M. 144.—Counties 153.

N.Y.Sup. 1939. The term "necessary" as used in statute regarding examination of adverse party before trial does not mean "indispensable" or "absolutely necessary" but is used in the sense of "needful." Civil Practice Act, § 288.—*Parsons v. Moss*, 13 N.Y.S.2d 865, 171 Misc. 828.—Pretrial Proc 91.

N.Y.Mun.Ct. 1934. Deposition of person not a party is "necessary" for use on motion justifying appointment of referee to take deposition of such person where he has knowledge of relevant facts and refuses to make affidavit concerning them,

since “necessary” as used in Civil Practice Act and rule providing for such depositions means “needful,” not “indispensible” or “absolutely necessary”. Civil Practice Act, § 307; Rules of Civil Practice, rule 120.—*Reiss v. Ballard Realty & Mortgage Corp.*, 269 N.Y.S. 631, 150 Misc. 34.—*Pretrial Proc* 64.

Pa. 1919. Employee who, as permitted by Act June 24, 1897, P.L. 204, authorizing minors over 18 to make “needful contracts” to become members of beneficial associations, signed application for membership in railroad’s relief association and whose contract with it made acceptance of benefits a release of liability, and who accepted benefits for injury before he was 21, could not recover damages against railroad; “needful” meaning necessary, requisite, essential, indispensable.—*Riddell v. Pennsylvania R. Co.*, 106 A. 80, 262 Pa. 582.—*Infants* 11.

NEEDFUL BUILDINGS

U.S.Ga. 1908. Post offices are among the other “needful buildings,” for the erection of which, as well as of “forts, magazines, arsenals, dockyards,” it is assumed that land will be bought, and for which land has been bought, by the government all over the United States, pursuant to U.S.C.A.Const. art. 1, § 8, cl. 17.—*Battle v. U.S.*, 28 S.Ct. 422, 209 U.S. 36, 52 L.Ed. 670.

U.S.W.Va. 1937. Locks and dams for the improvement of navigation constitute “needful buildings” within Constitution giving Congress implied exclusive jurisdiction over all places purchased with consent of state Legislature for erection of forts, magazines, arsenals, dry docks, and other “needful buildings.” U.S.C.A. Const. art. 1, § 8, cl. 17.—*James v. Dravo Contracting Co.*, 58 S.Ct. 208, 302 U.S. 134, 82 L.Ed. 155, 114 A.L.R. 318.—U S 3.

Mass. 1903. The term “needful buildings,” as so used, includes all buildings required for public use, and it is now settled that land within a state may be taken by the United States by the right of eminent domain, with or without the consent of a state. And if, upon lands so taken, forts, arsenals, or other public buildings are erected for the general government, such buildings, with their appurtenances, will be free from any such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed.—*Newcomb v. Inhabitants of Rockport*, 66 N.E. 587, 183 Mass. 74.

Mont. 1939. Lands purchased by the United States in connection with construction of the Fort Peck Dam project were not purchased for purposes of erecting “needful buildings” within meaning of the general ceding statute or the provision of Federal Constitution concerning exclusive authority of Congress over places acquired by purchase, with state’s consent, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, as respects whether the state of Montana had ceded jurisdiction to United States over such lands under the general ceding statute. Rev.Codes 1935, §§ 24, 25; U.S.C.A.Const. art. 1, § 8, cl. 17.—*Valley County v. Thomas*, 97 P.2d 345, 109 Mont. 345.—U S 3.

Mont. 1938. Offices, residences, and business places in townsite purchased by United States in connection with dam project with state’s consent and under exclusive jurisdiction of United States held “needful buildings” for completion of project within constitutional provision describing purposes for which United States may acquire lands by purchase with state’s consent. Const.U.S. art. 1, § 8, cl. 17.—*State ex rel. Board of Com’rs of Valley County v. Bruce*, 77 P.2d 403, 106 Mont. 322, certiorari granted *State of Montana ex rel v. Bruce*, 59 S.Ct. 70, 305 U.S. 581, 83 L.Ed. 366, affirmed 59 S.Ct. 465, 305 U.S. 577, 83 L.Ed. 363.—U S 55.

Mont. 1937. Offices, residences, and business places in townsite purchased by United States in connection with dam project with state’s consent and under exclusive jurisdiction of United States held “needful buildings” for completion of project within constitutional provision describing purposes for which United States may acquire lands by purchase with state’s consent, even if dam was not such a building, as respects county’s power to tax personalty in townsite. Const.U.S. art. 1, § 8, cl. 17.—*State ex rel. Board of Com’rs of Valley County v. Bruce*, 69 P.2d 97, 104 Mont. 500.—Tax 20.

Neb. 1937. Words “needful buildings,” as used in constitutional provision authorizing Congress to exercise exclusive legislation over places purchased for erection of forts, magazines, arsenals, dockyards, and other needful buildings, mean buildings on lands ceded by a state to United States and over which federal government acquires exclusive jurisdiction. Const. U.S. art. 1, § 8.—*Tagge v. Gulzow*, 271 N.W. 803, 132 Neb. 276.—U S 3.

Ohio 1988. Locks and dams are “needful buildings” and fall within special maritime and territorial jurisdiction of United States if land they are built on was acquired with consent of state within which they lie. U.S.C.A. Const. Art. 1, § 8, cl. 17; 18 U.S.C.A. § 7(3).—*Manley v. Burkhardt*, 531 N.E.2d 1306, 40 Ohio St.3d 35.—U S 3.

NEEDFUL CONTRACTS

Pa. 1919. Employee who, as permitted by Act June 24, 1897, P.L. 204, authorizing minors over 18 to make “needful contracts” to become members of beneficial associations, signed application for membership in railroad’s relief association and whose contract with it made acceptance of benefits a release of liability, and who accepted benefits for injury before he was 21, could not recover damages against railroad; “needful” meaning necessary, requisite, essential, indispensable.—*Riddell v. Pennsylvania R. Co.*, 106 A. 80, 262 Pa. 582.—*Infants* 11.

NEEDFUL ORDER

La. 1942. Where party is entitled to suspensive appeal to Supreme Court as a matter of right, granting of such appeal by Supreme Court after refusal thereof by lower court is a “needful order” within constitutional provision authorizing Supreme Court to issue any needful order that it deems necessary. Const.1921, art. 7, § 2.—*Wall v. Close*, 10 So.2d 779, 201 La. 986.—App & E 477.

NEEDFUL PUBLIC BUILDING

Me. 1973. Customs station is included as a "needful public building" within clause of Federal Constitution relating to right of the United States to exercise exclusive jurisdiction over certain lands. U.S.C.A.Const. art. 1, § 8, cl. 17.—*State v. Allard*, 313 A.2d 439.—U S 3.

NEEDFUL REGULATION

Conn. 1946. Municipal cemetery committee regulation forbidding use of canopies or tents in inclement weather except those supplied by cemetery itself at a fee, which regulation was promulgated to protect turf, insure against use of unsightly tents, protect workmen and improve operation of cemetery was a "needful regulation" within power of committee under the city charter of New Britain and was valid against attack of funeral director who had no property interest in cemetery but who had formerly furnished canopies at a charge. 14 Sp. Acts 1905, p. 963, § 123; Gen.St.1930, § 2981.—*A. W. Carlson, Inc. v. Judd*, 48 A.2d 269, 133 Conn. 74.—Cem 3.

NEEDFUL RULES AND REGULATIONS

Utah Terr. 1885. "Needful rules and regulations," as used in U.S.C.A.Const. art. 4, § 2, providing that Congress shall have power to make all needful rules and regulations respecting the territory of the United States, is to be construed to mean "laws."—*In re Higbee's Estate*, 5 P. 693, 4 Utah 19.

NEEDING SUCH AID

Cal. 1902. A bequest to a trustee, "to be used as, in his judgment, he may think best," in the "aid of deserving, aged nativeborn" in a certain town "needing such aid," is not invalidated by the fact that the court cannot determine by a perusal of the will, and independently of the action of the trustee, whether a particular person comes within the class designated, indefiniteness as to persons being the very essence of a charitable trust.—*Fay v. Howe*, 69 P. 423, 136 Cal. 599.—Char 21(2).

Cal. 1902. A bequest in trust for the aid of "deserving, aged native-born" in a certain town "needing such aid" is not invalid for uncertainty as to the class to be benefited.—*Fay v. Howe*, 69 P. 423, 136 Cal. 599.—Char 21(3).

NEEDLESSLY

Ill. 1895. Where a question was put to the jury, whether a locomotive engineer blew the whistle needlessly and recklessly, or willfully and wantonly, and the jury answered that it was needlessly blown, the word "needlessly," as used, cannot be construed to mean that it was recklessly blown.—*Wabash R. Co. v. Speer*, 40 N.E. 835, 156 Ill. 244.

NEED NOT BE SERVED CONSECUTIVELY

Kan.App. 2000. Phrase "need not be served consecutively," within meaning of statutes providing for a maximum of 30 days in county jail as a condition of probation, which need not be served consecutively, means that a defendant need not be

confined for 30 consecutive days as a condition of probation, but that 30-day sentence may be satisfied on weekends, nights, etc. K.S.A. 21-4602(c), 21-4603d(3), 21-4610(c)(14).—*State v. Petz*, 7 P.3d 1277, 27 Kan.App.2d 805.—Sent & Pun 1976(1).

NEED NOT INSURE

Or.App. 1984. Words "need not insure," in financial responsibility law section enumerating risks automobile liability insurance need not cover, differentiates between risks the statute enumerates and risks that policies required by the law do need to insure. ORS 486.546.—*Dowdy v. Allstate Ins. Co.*, 685 P.2d 444, 68 Or.App. 709, review denied 691 P.2d 481, 298 Or. 172.—Autos 43.

NEED NOT MAKE ANY STATEMENT

C.A.2 (N.Y.) 1970. While there may be philosophical distinctions between advising a person that he has a "right to remain silent" and that he "need not make any statement," anyone hearing either phrase would conclude that he did not have to say anything and, thus, failure of FBI agent to use phrase "right to remain silent" in advising defendant following arrest that he "need not make any statement" did not constitute such a great deviation from Miranda standards as to make warning ineffective.—*U.S. v. Lamia*, 429 F.2d 373, certiorari denied 91 S.Ct. 150, 400 U.S. 907, 27 L.Ed.2d 146.—Crim Law 412.2(3).

C.A.2 (N.Y.) 1970. Phrase "need not make any statement" employed by FBI agent in warning defendant of his constitutional rights following arrest, could not have carried with it the meaning of a formal statement at a future court hearing, especially where warning was coupled with language of present and contained phrases "to us" and "at this time."—*U.S. v. Lamia*, 429 F.2d 373, certiorari denied 91 S.Ct. 150, 400 U.S. 907, 27 L.Ed.2d 146.—Crim Law 412.2(3).

NEED NOT TERMINATE

Iowa App. 1990. Phrase "need not terminate" as used in statute providing that court need not terminate parent-child relationship if parent is absent due to commitment in institution means that trial court has discretion to terminate parent-child relationship in that situation. I.C.A. §§ 4.1, subds. 2, 36, pars. a, b, 4.6, subd. 1, 232.116, subd. 3, par.e.—*In Interest of J.V.*, 464 N.W.2d 887.—Infants 157.

NEED OF RELIEF

Vt. 1951. Under statute providing that if transient person dies, is suddenly taken sick, or is otherwise disabled and confined to hospital in a town, and is in "need of relief," the person at whose hospital he is shall be at the expense of relieving and supporting such person until notice of the situation of such person is given to overseer of poor of town, quoted words mean in need of medical relief or relief of that nature. V.S. §§ 7112, 7113.—*Barre City Hospital v. Town of St. Johnsbury*, 83 A.2d 600, 117 Vt. 5.—Paupers 43(2).

Vt. 1930. Whenever transient person, irrespective of financial condition, is committed to jail, he becomes in "need of relief" within statute authorizing sheriff's recovery against town. G.L. 4219, 4222.—*Catlin v. Town of Georgia*, 152 A. 89, 103 Vt. 97.—*Paupers* 47.

NEEDS

C.A.3 1950. Under terms of New Jersey trusts giving taxpayer as trustee authority in her discretion to pay all or part of the net income therefrom annually to her husband the settlor or to herself in accordance with their respective "needs", taxpayer was not endowed in the trust instruments with such unfettered command that the income therefrom was taxable to her as her own money. 26 U.S.C.A. (I.R.C.1954) § 61.—*Funk v. C.I.R.*, 185 F.2d 127.—*Int Rev* 4009.

C.A.3 1950. Under New Jersey law, where trusts are unambiguous and specific, the term "needs" as respects distribution to the beneficiary, must be construed according to its ordinary meaning and means, that which is reasonably necessary to maintain a beneficiary's station in life and is not indicative of unqualified gift nor is it dependent upon the fancy of the administrator.—*Funk v. C.I.R.*, 185 F.2d 127.—*Trusts* 280.

Cal. 1949. Recital in will that no provision was made for son because he was named beneficiary of insurance on testator's life in an amount sufficient for his "needs" so far as any contribution from testator was concerned used quoted word as synonymous with "support" and expressed testator's intention to satisfy his obligation under divorce decree to support son by making him beneficiary of such insurance. Prob.Code, § 106.—*Taylor v. George*, 212 P.2d 505, 34 Cal.2d 552.—*Wills* 714.

Ill.App. 4 Dist. 1997. When Marriage and Dissolution of Marriage Act refers to "needs" of spouse seeking maintenance, it does not necessarily mean minimum needs. S.H.A. 750 ILCS 5/504(a)(2).—*In re Marriage of Fields*, 224 Ill.Dec. 184, 681 N.E.2d 166, 288 Ill.App.3d 1053, appeal denied *Fields v. Fields*, 227 Ill.Dec. 4, 686 N.E.2d 1160, 174 Ill.2d 559.—*Divorce* 237.

N.H. 1955. Under will providing for payments from income and principal of trust fund for "necessities" and "needs" of beneficiary, the words "necessities" and "needs" had no fixed or rigid meaning, but could not cover that which would be merely desirable and not reasonably essential.—*Amoskeag Trust Co. v. Wentworth*, 111 A.2d 198, 99 N.H. 346.—*Wills* 684.9.

N.J. 1971. A wife's "needs," for purpose of determining husband's duty to support, are not measured merely by the amount of money necessary to maintain wife at level of subsistence or even reasonable comfort but will vary depending upon the case, for "needs" contemplate the amount of money necessary to maintain wife in manner as nearly commensurate as possible with her former status.—*Capodanno v. Capodanno*, 275 A.2d 441, 58 N.J. 113.—*Hus & W* 298(1).

N.Y.Sur. 1924. Under will empowering trustees in their discretion to use a portion of the principal for care, support, or maintenance of beneficiaries or education of their children, if beneficiary "needs" it for such purposes, the trustees in exercising such discretion must consider the value of the individual property of the beneficiaries and probable net income therefrom and expend portion of principal only if circumstances of the beneficiary make it necessary to resort to such principal for support, care, and maintenance.—*In re Johnson's Will*, 207 N.Y.S. 66, 123 Misc. 834.—*Wills* 692(3).

Ohio 1942. Where there was no notice to city of Columbus or appearance on its behalf at meeting of county budget commission to allocate local government fund, in absence of a hearing the commission could not be said to have considered "needs" of the city as required by statute. Gen.Code, § 5546-20.—*Thatcher v. City of Columbus*, 40 N.E.2d 921, 139 Ohio St. 473, 22 O.O. 519.—*Counties* 191.

Ohio 1942. Under statute requiring local government fund to be apportioned among subdivisions of county in proportion to amount of "needs" of each, county budget commission or Board of Tax Appeals on appeal should not go back of findings of relative needs to determine whether faulty financing or administration brought about or augmented the need. Gen.Code, §§ 5546-20, 5625-28.—*Thatcher v. City of Columbus*, 40 N.E.2d 921, 139 Ohio St. 473, 22 O.O. 519.—*Counties* 191.

Or.App. 1991. Children's skiing expenses were not "needs" that could constitute substantial change in circumstances to justify increase in child support, though children wished to become involved in competitive ski racing in hope of qualifying for United States Ski Team. ORS 25.270–25.285.—*Matter of Marriage of Wuepper*, 818 P.2d 964, 109 Or.App. 172.—*Child S* 307.

Tex.App.—Houston [1 Dist.] 1997. Determination of child's "needs," within meaning of child support guideline governing amount of support owed by parent whose income exceeds \$6,000 per month, is guided by best interests of child, and such "needs" are not limited to the bare necessities of life. V.T.C.A., Family Code § 154.126(b).—*Nordstrom v. Nordstrom*, 965 S.W.2d 575, rehearing overruled, and review denied, and rehearing of petition for review overruled, certiorari denied 119 S.Ct. 1034, 525 U.S. 1142, 143 L.Ed.2d 42, rehearing denied 119 S.Ct. 1489, 526 U.S. 1081, 143 L.Ed.2d 571.—*Child S* 145.

Vt. 1996. For purposes of determining child support obligations under child support guidelines, child's "needs" reflect general standard of living of family; children are not expected to live at minimal level of comfort while one or more parents enjoy luxury lifestyle, and child's needs increase proportionally with their opportunity to participate in educational, cultural and recreational activities. 15 V.S.A. § 656(d).—*Smith v. Stewart*, 684 A.2d 265, 165 Vt. 364.—*Child S* 100.

NEEDS AND WELFARE OF A CHILD

Pa.Super. 1984. Phrase “needs and welfare of a child” denotes certain minimum requirements that all children are entitled to, including adequate housing, clothing, food, and love, while the phrase “best interest of the child” connotes a weighing of two adequate but unequal situations, traditionally the respective households of a mother and father. 23 Pa.C.S.A. § 2511(b).—*In re Adoption of Michael J.C.*, 473 A.2d 1021, 326 Pa.Super. 143, reversed 486 A.2d 371, 506 Pa. 517.—*Infants* 154.1.

NEEDS OF COMMERCE OR PUBLIC INTEREST

Cal. 1939. Railroad, which sought to establish lower than maximum reasonable rates for transportation of beverages failed to establish, as required by the Public Utilities Act, that lower rates were required by “needs of commerce or public interest,” where manufacturer of beverages, and not the general public, would directly profit by the lower rates. St.1935, p. 1897, § 13½.—*Southern Pac. Co. v. Railroad Commission of Cal.*, 87 P.2d 1055, 13 Cal.2d 89.—*Carr* 18(2).

NEEDS OF EMPLOYERS AND EMPLOYEES

Wis. 1964. Under legislation providing that a license is to be denied an employment agency if existing agencies are sufficient to supply the “needs of employers and employees,” competent and well-regulated employment agencies which could add to the quality and quantity of employment services to supply needs sought by employers or employees should be granted a license. W.S.A. 105.13.—*Silverberg v. Industrial Com’n*, 128 N.W.2d 674, 24 Wis.2d 144, 20 A.L.R.3d 588.—*Licens* 20.

NEEDS OF THE CHILD

Tex.App.—Houston [1 Dist.] 1994. For purposes of provision providing that court may order additional amounts of child support above \$4,000 net monthly resources based only on proven needs of child at time of order, “needs of the child” includes more than bare necessities of life, but are not determined by parents’ ability to pay or lifestyle of family, and should reflect best interests of child. V.T.C.A., Family Code § 14.055(c) (Repealed).—*Hatteberg v. Hatteberg*, 933 S.W.2d 522, rehearing overruled.—*Child* S 145.

NEEDS OF THE CHILDREN

Tex.App.—El Paso 1991. “Needs of the children” which must be considered in determining appropriate child support are not solely based on current expenditures for necessities, but in addition to monthly net resources, must take into consideration ability to pay and lifestyle of family and particularly of obligor.—*Belcher v. Belcher*, 808 S.W.2d 202.—*Child* S 100.

NEED TEST

C.A.9 (Cal.) 1988. “Need test” for determining strength of trademark, for purposes of service mark infringement, is to what extent mark is actually needed by competitors to identify goods or services;

if message conveyed by mark about goods or services is so direct and clear that competing sellers would be likely to need to use term in describing or advertising goods or services, then that indicates mark is descriptive.—*Miss World (UK) Ltd. v. Mrs. America Pageants, Inc.*, 856 F.2d 1445.—*Trade Reg* 331.

D.Idaho 1995. “Need test” used in determining whether trademark is suggestive or merely descriptive examines extent to which mark is actually needed by competitors to identify their goods or services.—*Committee for Idaho’s High Desert v. Yost*, 881 F.Supp. 1457, affirmed in part, reversed in part 92 F.3d 814.—*Trade Reg* 14, 25.

Kan.App. 1999. Two tests are commonly used to determine whether a mark is suggestive, and thus registrable under Lanham Act without any further showing of secondary meaning: under “imagination test,” focus is on amount of imagination required for a consumer to associate a given mark with the services it identifies, and if consumer must use more than token imagination to make the association, mark is suggestive and not descriptive, while “need test” focuses on the extent to which a mark is actually needed by competitors to identify their services. Lanham Trade-Mark Act, § 2, 15 U.S.C.A. § 1052.—*Scholfield Auto Plaza, L.L.C. v. Carganza, Inc.*, 979 P.2d 144, 26 Kan.App.2d 104.—*Trade Reg* 25.

NEED TO PRESERVE THE AVAILABILITY OF THE PROPERTY

E.D.Pa. 1990. United States’ “need to preserve the availability of the property,” which is necessary to obtain order under Racketeer Influenced and Corrupt Organizations Act restraining transfer, liquidation, and dissipation of funds in bank account, concerns not how United States will eventually dispose of property, but rather what will happen to property if injunction is not entered. 18 U.S.C.A. § 1963(d)(1)(B)(ii).—*In re Assets of Parent Industries, Inc.*, 739 F.Supp. 248.—*Inj* 39.

NEEDY

Bkrty.E.D.Ky. 1993. Chapter 7 debtors were not sufficiently “needy,” and their case could be dismissed as “substantial abuse” of Chapter 7, where debtors had sufficient excess income to fund three-year Chapter 13 plan that would pay all or almost all of their debts. Bankr.Code, 11 U.S.C.A. § 707(b).—*In re Hutton*, 158 B.R. 648.—*Bankr* 2254.

Bkrty.W.D.Ky. 2001. Two-part test must be met in order for a child to be classified as “needy” under Kentucky law, for purpose of determining applicability of Kentucky public assistance exemption statute: first, child must be deprived of parental support as defined under Title IV of the Social Security Act, since repealed, and regulations promulgated under that law, and second, child must not otherwise have provided to him or her a level of subsistence that is compatible with decency and health. KRS 205.010(4), 205.220; 45 C.F.R. § 233.90(a)(1), (c)(1)(i); 921 Ky. Admin. Regs. 2:006.—*In re Beltz*, 263 B.R. 525.—*Exemp* 37.

Cal.App. 4 Dist. 1975. With regard to statutory provision to effect that child is eligible for AFDC assistance if child is needy, term "needy" is not equivalent to destitute or penniless. Social Security Act, § 406, 42 U.S.C.A. § 606.—*Bryant v. Swoap*, 121 Cal.Rptr. 867, 48 Cal.App.3d 431.—Social S 194.7(1).

La. 1891. The term "needy" may be used to characterize minor children who do not own property in their own names, although they earn their own living.—*Woods v. Perkins*, 9 So. 48, 43 La. Ann. 347.

Mo. 1942. The word "need" as used in statute requiring denial of old age assistance if the applicant is not found to be in "need" means a condition requiring supply or relief, urgent exigency, want of means of subsistence, poverty, indigence, and destitution, and "needy" means distressed by want of means of living, or poverty-stricken or indigent, necessitous, very poor. V.A.M.S. § 208.010.—*Nichols v. State Social Security Com'n of Missouri*, 164 S.W.2d 278, 349 Mo. 1148.—Social S 177.

Mo.App. 1938. The Court of Appeals must ascribe to word "needy" in federal statute, authorizing appropriations for purpose of enabling states to furnish financial assistance to aged "needy" individuals, its ordinary legal meaning of "indigent, necessitous, very poor." Federal Social Security Act § 1, 42 U.S.C.A. § 301.—*Moore v. State Social Security Com'n*, 122 S.W.2d 391, 233 Mo.App. 536.—Social S 177.

Mo.App. 1938. An aged man having no property or right in property of any value is "needy" within federal statute authorizing appropriations to enable states to furnish financial assistance to aged needy individuals, though he has a child who can support him. Federal Social Security Act § 1, 42 U.S.C.A. § 301.—*Moore v. State Social Security Com'n*, 122 S.W.2d 391, 233 Mo.App. 536.—Social S 177.

N.Y.A.D. 3 Dept. 1975. Word "needy" within constitutional provision that the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions as the legislature may from time to time determine, does not in its ordinary meaning encompass a person who is creating the need by consistently avoiding or refusing to provide for his needs. Const. art. 17, § 1.—*Barie v. Lavine*, 367 N.Y.S.2d 587, 48 A.D.2d 36, affirmed 388 N.Y.S.2d 878, 40 N.Y.2d 565, 357 N.E.2d 349.—Paupers 2.

N.Y.Sup. 1983. Word "needy" in State Constitution section providing that aid, care and support of needy are public concerns and shall be provided by state and by its subdivisions does not encompass a person who may create that need by failing or refusing to provide for own needs. *McKinney's Const. Art. 17, § 1.*—*Harrington v. Blum*, 458 N.Y.S.2d 864, 117 Misc.2d 623.—Social S 2.

N.Y.Sup. 1912. Testator bequeathed property to a graduate association of Cornell University, to be used by it "in aiding and assisting needy young women students at said Cornell University as in the

judgment of the officers and directors of the association may seem best and proper." Held, that the word "needy" was used as an adjective, from the noun "need," defined as urgent want or necessity, and that, construed with the words "aiding and assisting," it indicated a charitable and benevolent purpose, educational in character, and as such enforceable.—*Sawyer v. Dearstyne*, 139 N.Y.S. 955.

NEEDY BLIND PERSON

Cal.App. 4 Dist. 1946. A blind person is not a "needy blind person" entitled to aid merely because his income is insufficient to support him, but it must also appear that he is unable to provide the necessities of life. Welfare and Institutions Code, § 3005.—*Newbold v. Social Welfare Bd.*, 174 P.2d 482, 76 Cal.App.2d 844.—Social S 180.

NEEDY, DEPENDENT CHILD

Tex.App.—Houston [1 Dist.] 1997. Child's emancipation did not deprive attorney general of authority to bring action to reduce to judgment child support arrearage that had accrued under divorce decree, despite father's contention that child was not a "needy, dependent child" within meaning of federal statute governing eligibility for public assistance. Social Security Act, §§ 407, 451, as amended, 42 U.S.C.A. §§ 607, 651; V.T.C.A., Family Code §§ 102.003(5), 102.007, 157.263, 157.005(b).—*Rivera v. Office of Atty. Gen.*, 960 S.W.2d 280, rehearing overruled.—Child S 459.

NEEDY PERSON

N.Y.A.D. 2 Dept. 1979. Petitioner could not knowingly and intelligently waive her legal right to a sizeable sum of money by refraining to exercise her right of election against her husband's will and then present herself as a "needy person" in order to qualify for medical assistance under Social Services Law. Social Services Law §§ 363, 365-a, subd. 1, 366, subd. 2(b); Const. art. 17, § 1.—*Flynn v. Bates*, 413 N.Y.S.2d 446, 67 A.D.2d 975, appeal denied 421 N.Y.S.2d 1031, 48 N.Y.2d 606, 397 N.E.2d 760.—Health 468.

N.Y.A.D. 3 Dept. 1942. Aged woman who was an inmate of a fraternal private home, and who, if she had been living outside the home, was concededly entitled to old age assistance under the Social Welfare Law, was an inmate of a "private home" as distinguished from an inmate of a "public home" and was a "needy person" entitled to assistance, within contemplation of the Social Welfare Law, where her residence at the home was merely by sufferance, and was not a matter of contractual rights. Social Welfare Law, §§ 210, subd. 6, 211 subds. 1, 4.—*Application of Van Marter*, 33 N.Y.S.2d 677, 263 A.D. 498, affirmed 43 N.E.2d 351, 288 N.Y. 729.—Paupers 43(2).

Vt. 1996. Defendant was not "needy person" and, thus did not qualify for assignment of public defender, although his indebtedness exceeded value of his assets, where his income exceeded 200% of federal poverty income guideline and his substantial indebtedness resulted from expensive life-style, including \$2,286 monthly mortgage payments, that

exceeded his income of \$3,186 per month. Administrative Order No. 4, §§ 5, 5(b).—*State v. Forte*, 678 A.2d 1265, 165 Vt. 573.—Crim Law 641.11.

NEEDY PERSONS

Cal. 1955. Petitioners, who possessed the age and residence requirements for benefits under the Old Age Security Act, who, as members of a religious society, gave all their worldly possessions to the society to promote its objective, and who received \$16 to \$18 per month in food, clothing, and medicine from society which was not obligated to so provide for them, were "needy persons" under the Act. Welfare and Institutions Code, §§ 2010, 2020, 2160(a-c, e-g), 2160.5, 2163 et seq.—*Bertch v. Social Welfare Dept. of Cal.*, 289 P.2d 485, 45 Cal.2d 524.—Social S 177.

NEEDY SPOUSE

D.C. 1999. Receipt of public assistance is not a requirement for obtaining spousal support under statute as a "needy spouse." D.C.Code 1981, § 16-916(a).—*Atkinson v. Atkinson*, 730 A.2d 667.—Divorce 238.

NEEDY, WORTHY, AMBITIOUS STUDENTS

S.D. 1952. A devise to a college to found a scholarship fund for "needy, worthy, ambitious students" created trust for a charitable use, within rule excepting charitable trusts from general rule that trust must have a natural or artificial cestui que trust, and hence there was not such indefiniteness of beneficiaries as would invalidate trust under rule against perpetuities. SDC 51.0231, 51.0232, 51.0417.—*In re McNair's Estate*, 53 N.W.2d 210, 74 S.D. 369.—Char 21(4); Perp 8(7).

NEEDY YOUNG WOMEN STUDENTS

N.Y.Sup. 1912. "Needy young women students" constitute a class, public in character, and the limitation of a charitable bequest to the use of such students at a certain university, which is a public institution, does not affect such public character.—*Sawyer v. Dearstyne*, 139 N.Y.S. 955.—Char 10.

NE EXEAT

U.S.N.Y. 1932. Writ of "ne exeat" is a restraint upon the common right of movement from place to place within the United States and upon emigration.—*D. Ginsberg & Sons v. Popkin*, 52 S.Ct. 322, 285 U.S. 204, 76 L.Ed. 704.—Ne Ex 1.

Ala. 1951. Writ of "ne exeat" is an ancient English Chancery writ, with purpose of insuring compliance with orders and decrees of a court of equity and to restrain the respondent, in certain cases, from leaving the jurisdiction. Equity Rules 22, 78, Code 1940, Tit. 7 Appendix; Code 1940, Tit. 7, §§ 301, 309.—*Thompson v. Evans*, 54 So.2d 775, 256 Ala. 379.—Ne Ex 1.

Ariz.App. 1965. Writ of "ne exeat" itself is directed to sheriff commanding him to commit party to custody unless he gives security in amount set by court.—*National Auto. & Cas. Ins. Co. v. Queck*, 405 P.2d 905, 1 Ariz.App. 595.—Ne Ex 9.

Colo. 1999. The writ of "ne exeat" is a writ which forbids the person to whom it is addressed from leaving the country, the state, or the jurisdiction of the court.—*In re People ex rel. B.C.*, 981 P.2d 145.—Ne Ex 1.

D.C. 1976. "Ne exeat" is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. D.C.C.E. § 49-301; D.C.Code 1940, § 11-315.—*Gredone v. Gredone*, 361 A.2d 176.—Ne Ex 1.

Ill.App. 1 Dist. 1942. The manifest purpose of a writ of "ne exeat" is to prevent a defendant from going beyond the jurisdiction of the court and to compel an answer, and is not intended to be used as a substitute for punishment, or as a means of life imprisonment. S.H.A. ch. 97, §§ 1, 11.—*Tegtmeyer v. Tegtmeyer*, 40 N.E.2d 767, 314 Ill.App. 16, certiorari denied 63 S.Ct. 257, 317 U.S. 689, 87 L.Ed. 552, application denied 63 S.Ct. 265, 317 U.S. 603, 87 L.Ed. 552, rehearing denied 64 S.Ct. 1272, 322 U.S. 771, 88 L.Ed. 1596.—Ne Ex 1.

Miss. 1940. The office and object of the writ of "ne exeat" is to detain the person of defendant within the state in order that he remain amenable to processes of the court during pendency of the cause and may be compelled to perform orders and decrees, either interlocutory or final, where personal performance thereof by him is essential to the effectual preservation and enforcement of complainant's rights.—*Johnson v. Johnson*, 198 So. 308, 189 Miss. 561.—Ne Ex 1.

Miss. 1939. The object of a writ of "ne exeat" is to detain the person of defendant to compel him to perform decree of the court in those cases where his departure would endanger rights of complainant or prevent effectual enforcement of order of the court.—*Muckelrath v. Chezem*, 186 So. 621, 184 Miss. 511.—Ne Ex 1.

N.J.Err. & App. 1928. The purpose of a "ne exeat" writ is one of restraint to maintain the presence of the defendant within the state for the purpose of securing the practical application of legal process.—*Foote v. Foote*, 140 A. 312, 102 N.J.Eq. 291.

Tenn. 1947. Wife's affidavit alleging that husband had left state to avoid pending divorce action, that he had written wife that he would stay out west, and that wife believed he would, satisfied requirements for issuance of writ of "ne exeat". Code 1932, § 10533.—*Kirby v. Kirby*, 206 S.W.2d 404, 185 Tenn. 408.—Divorce 84.

Wis. 1906. A writ of "ne exeat," at common law, was simply a writ to obtain equitable bail. It was issued by a court of equity upon application of the complainant against the defendant when it appeared that there was a debt positively due, certain in amount, or capable of being made certain on an equitable demand not suable at law (except in cases of account and possibly some other cases of concurrent jurisdiction), having conveyed away his property, or under other circumstances which would ren-

der any decree ineffectual.—*Davidor v. Rosenberg*, 109 N.W. 925, 130 Wis. 22, 118 Am.St.Rep. 986.

NE EXEAT BOND

Ga. 1975. Requirement that noncustodial parent post \$5,000 bond prior to exercise of her summer visitation rights under custodial decree allowing her to take children to her residence in Mississippi did not constitute "ne exeat bond" since bond did not prevent parent from leaving state, but merely assured that parent would comply with terms of court order and return children to Georgia at expiration of visitation period.—*Dearman v. Rhoden*, 219 S.E.2d 704, 235 Ga. 457.—Ne Ex 7.

Miss. 1939. In wife's suit for divorce and alimony, "ne exeat bond" conditioned on husband's appearance on hearing of bill of complaint was in effect an appearance bond to abide the decree of the court and not a bond to abide and perform the judgment.—*Muckelrath v. Chezem*, 186 So. 621, 184 Miss. 511.—Divorce 84.

NE EXEAT REGNO

Mass. 1946. The object of a writ of "ne exeat regno" is to secure to plaintiff the presence of the defendant at termination of the suit, either by his detention or by his giving equitable bail.—*Cohen v. Cohen*, 64 N.E.2d 689, 319 Mass. 31, 163 A.L.R. 362.—Ne Ex 1.

NE EXEAT REPUBLICA

Pa. 1958. The writ of "ne exeat republica" is a process in chancery and in aid of the chancery jurisdiction of the court, issued upon cause shown, to restrain a party from leaving the state until bail is given to perform the decree of the court, and where not otherwise provided by statute, it is governed by the same principles that apply in England to the writ of ne exeat regno.—*Elkay Steel Co. v. Collins*, 141 A.2d 212, 392 Pa. 441.—Ne Ex 1.

NE EXEAT WRIT AND BOND

Miss. 1987. "Ne exeat writ and bond" are designed to insure personal performance for effectual preservation and enforcement of rights of complainant in cause. Code 1972, § 9-1-19.—*Roberts v. Fuhr*, 523 So.2d 20.—Ne Ex 1.

NEGATIVE

U.S.N.Y. 1939. "Negative," as respects negative orders of a commission, is an obfuscating adjective which implies a search for a distinction, non-action as against action, which does not involve the reviewability of the Commission's orders within the framework of its discretionary authority and within the criteria of justiciability.—*Rochester Telephone Corporation v. U.S.*, 59 S.Ct. 754, 307 U.S. 125, 83 L.Ed. 1147.

C.A.9 (Wash.) 1993. "Waste" is article of commerce, for purposes of "negative" or "dormant" commerce clause prohibition against interstate curtailment of commerce to advance particular state's interest. U.S.C.A. Const. Art. 1, § 8, cl. 3.—BFI

Medical Waste Systems v. Whatcom County, 983 F.2d 911.—Commerce 52.10.

W.D.N.C. 1936. Persons soliciting others to have photographs taken, arranging for sitting, and actually having camera present and taking "negative," which is outline of the subject on glass, held engaged in profession or business of photography and to be acting as "photographers" in state within state statute imposing excise tax on business of photography, notwithstanding that negatives were sent to another state for development (Pub.Laws N.C.1935, c. 155; c. 371, § 109).—*Lucas v. City of Charlotte*, 14 F.Supp. 163, affirmed 86 F.2d 394, 109 A.L.R. 297.—Licens 11(1).

Ariz.App.Div. 1 1994. Undeveloped film is not the statutory equivalent of a "negative" within meaning of statute defining term "visual or print medium," as used in sexual exploitation of children statutory chapter, as any film or "negative" or any book or magazine containing or incorporating in any manner any film or "negative"; word "negative" as commonly used with respect to photography refers to a developed negative image in which tones or colors of the subject are reversed, usually on transparent base from which positive prints may be made, and undeveloped film has no visible image of any kind and the statute lists both film and "negative" as examples of visual or print medium, indicating that undeveloped film is not the equivalent of a "negative." A.R.S. § 13-3551, subd. 4.—*State v. Valdez*, 894 P.2d 708, 182 Ariz. 165.—Obscen 5.2.

Iowa 1982. For purposes of applying "stale use" statute, deed restrictions on business use of properties are "negative" easements subject to statute as "use restrictions". I.C.A. § 614.24.—*Amana Soc. v. Colony Inn, Inc.*, 315 N.W.2d 101.—Covenants 72.1.

Md. 1989. Under the "market-participant doctrine", when a state acts as a buyer or seller in a market rather than in its distinctive governmental capacity, its behavior is not subject to that aspect of the commerce clause which operates as an implied limitation upon state and local government authority, referred to as the "dormant" or "negative" "commerce clause". U.S.C.A. Const. Art. 1, § 8, cl. 3.—*Board of Trustees of Employees' Retirement System of City of Baltimore v. Mayor and City Council of Baltimore City*, 562 A.2d 720, 317 Md. 72, certiorari denied *Lubman v. Mayor and City Council of Baltimore City*, 110 S.Ct. 1167, 493 U.S. 1093, 107 L.Ed.2d 1069.—Commerce 12.

Mich. 1895. A "negative" is a picture.—*People v. Ketchum*, 61 N.W. 776, 103 Mich. 443, 50 Am.St. Rep. 383, 27 L.R.A. 448.

Minn. 1960. "Evidence" is "positive" where the witness states that a certain thing did or did not happen or exist, and is "negative" where the witness states that he did not see or know of the happening or existence of a circumstance or fact.—*Miller v. Hughes*, 105 N.W.2d 693, 259 Minn. 53.—Evid 586(1).

Pa. 1940. In actions against building owner for injuries and death of subcontractor's employees resulting when ammonia pipes near wall which they were repairing exploded, alleged failure of building owner to give notice of danger of pipes was not a fact peculiarly within owner's knowledge and therefore was not within class of facts to which rule that plaintiff need not prove a "negative" but may require defendant to prove the fact because of superior means of knowledge, where contractor knew from examination conditions under which work was to be done and it was not shown that he was not informed of contents of pipes and dangers incident to breaking them.—*Valles v. Peoples-Pittsburgh Trust Co.*, 13 A.2d 19, 339 Pa. 33.—*Evid* 92, 93.

Tenn.Crim.App. 1981. "Negative testimony" is that given by a witness who, having been present, testifies, not positively that an alleged fact or event did not exist or occur, but merely that he did not see or hear or otherwise observe its existence or occurrence; if witness, having been present, testifies that he was attentive but did not see or hear or otherwise observe alleged fact or event, his testimony while commonly termed a "negative," is not of a purely negative character, and where witness describes fact or event observed by him and an opposing witness observed and describes same fact or event differently, testimony of both is equally positive.—*State v. Smith*, 626 S.W.2d 283.—*Crim Law* 387.

NEGATIVE AMORTIZATION

C.A.9 (Nev.) 1992. "Negative amortization," in context of bankruptcy plan of reorganization, refers to provision wherein part or all of interest on secured claim is not paid currently but instead is deferred and allowed to accrue, with accrued interest added to principal and paid when income is higher; extent of negative amortization depends upon difference between accrual rate, or overall rate of interest to be paid on claim, and pay rate, or rate of interest to be paid on monthly basis. *Bankr.Code*, 11 U.S.C.A. § 1129(b), (b)(1), (b)(2)(A)(i)(II).—*Great Western Bank v. Sierra Woods Group*, 953 F.2d 1174.—*Bankr* 3560.

E.D.Pa. 1996. In context of fair and equitable requirement for Chapter 11 plan, "negative amortization" occurs when part or all of the interest on secured claim is not paid currently but, instead, is deferred and allowed to accrue, with the accrued interest added to the principal and paid when income is higher. *Bankr.Code*, 11 U.S.C.A. § 1129(b)(2)(A)(i)(II).—*Corestates Bank, N.A. v. United Chemical Technologies, Inc.*, 202 B.R. 33, on remand *In re United Chemical Technologies, Inc.*, 1996 WL 571850.—*Bankr* 3563.1.

Bkrtcy.D.Kan. 1998. "Negative amortization" provision is one wherein part or all of the interest on secured claim is not paid currently but, instead, is deferred and allowed to accrue, with accrued interest added to principal and paid when income is higher.—*In re Sunflower Racing, Inc.*, 219 B.R. 587, stay denied 225 B.R. 225, affirmed 226 B.R. 673.—*Bankr* 3560.

Bkrtcy.E.D.Va. 1994. "Negative amortization" or "deferral of interest" refers to plan provision wherein part or all of interest on secured claim is not paid currently but instead is deferred and allowed to accrue with accrued interest added to principal and paid when income is higher.—*In re Carlton*, 186 B.R. 644.—*Bankr* 3560.

NEGATIVE AVERMENT

Pa. 1943. In stockholder's action against building and loan association to recover withdrawal value of stock, allegation in statement of claim that cash applicable to payment of plaintiff's demand had come into defendant's treasury since withdrawal notice had become effective, was not a "negative averment" of facts peculiarly within defendant's knowledge which defendant was required to disprove, where plaintiff as a former employee of defendant had access to the books and had placed her own name on withdrawal list. 15 P.S. § 871 et seq.; *Act* April 10, 1879, P.L. 16, § 2, 15 P.S. § 992.—*Meth v. Broad Street & Bonded Bldg. & Loan Ass'n*, 30 A.2d 119, 346 Pa. 331.—*Evid* 92, 93.

NEGATIVE AVERMENTS

D.Del. 1926. Provision of National Prohibition Act relating to "negative averments" does not affect affirmative essential elements (National Prohibition Act, tit. 2, Sec. 32 (Comp. St. Sec. 10138 1/2s)). National Prohibition Act, tit. 2, Sec. 32 (Comp. St. Sec. 10138 1/2s), declaring it unnecessary to include 'any defensive negative averments' in indictment, does not affect affirmative essential elements, and goes no further than to permit the substitution of 'prohibited and unlawful' for an allegation that accused are not within exception; "negative averments" meaning those in which a negative is used.—*U.S. v. Eisenminger*, 16 F.2d 816.—*Int Liq* 222.

D.Del. 1926. Provision of National Prohibition Act relating to "negative averments" does not affect affirmative essential elements. National Prohibition Act, tit. 2, § 32, 27 U.S.C.A. § 49.—*U.S. v. Eisenminger*, 16 F.2d 816.—*Int Liq* 222.

Or.App. 1995. So called rule of "negative averments" is shorthand expression for court's determination as to whether legislature intended that state must affirmatively allege in indictment that defendant does not come within express proviso or exception enumerated in criminal statute.—*State v. Vasquez-Rubio*, 897 P.2d 324, 134 Or.App. 646, review allowed 903 P.2d 885, 322 Or. 167, affirmed 917 P.2d 494, 323 Or. 275.—*Ind & Inf* 111(1).

NEGATIVE BEQUEST

N.Y.Sur. 1976. Where, inter alia, to the extent that will was ambiguous, surrounding facts and circumstances established that testator had purpose of excluding his estranged wife as a beneficiary of his estate, provision of will which expressed "wish" that wife was in no event to share in testator's estate "to any greater extent than she would have shared, had I died intestate" was in the nature of a "negative bequest" or a "disinheritance clause" and did not provide basis for a finding of an "affirma-

tive legacy". EPTL 1-2.18.—Estate of Taitt, 386 N.Y.S.2d 308, 87 Misc.2d 586.—Wills 535.

NEGATIVE CAUSATION

S.D.N.Y. 1994. In suit for misleading registration statement, defendants may show "negative causation," that losses were due to depreciation in value not resulting from alleged misrepresentation, in order to escape liability, while plaintiffs must show decrease in value due to fraud. Securities Act of 1933, § 11(e), 15 U.S.C.A. § 77k(e).—McMahan & Co. v. Wherehouse Entertainment, Inc., 859 F.Supp. 743, affirmed in part, reversed in part 65 F.3d 1044, certiorari denied 116 S.Ct. 1678, 517 U.S. 1190, 134 L.Ed.2d 781.—Sec Reg 25.21(5).

NEGATIVE COMMERCE CLAUSE

C.A.7 (Wis.) 1991. If Congress wants, it can authorize states to engage in activities that but for authorization would violate "dormant commerce clause" or "negative commerce clause," which refers to interpretation of clause as, by its own force and without any need for congressional action, forbidding the states to interfere unduly with interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.—Milwaukee County Pavers Ass'n v. Fiedler, 922 F.2d 419, certiorari denied 111 S.Ct. 2261, 500 U.S. 954, 114 L.Ed.2d 714.—Commerce 9.

D.Or. 1999. The "negative commerce clause" denies states the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.—Center for Legal Studies, Inc. v. Lindley, 64 F.Supp.2d 970, affirmed 1 Fed.Appx. 662.—Commerce 12.

Cal.App. 3 Dist. 2002. The "negative Commerce Clause" or "dormant Commerce Clause" is an implicit limitation on the states' power to regulate both domestic interstate and foreign commerce, whether or not Congress has acted. U.S.C.A. Const. Art. 1, § 8, cl. 3.—Bronco Wine Co. v. Espinoza, 128 Cal.Rptr.2d 320, 104 Cal.App.4th 598, review filed, opinion modified on denial of rehearing 105 Cal.App.4th 270G.—Commerce 12.

NEGATIVE CONCLUSIONS

N.Y.Sup. 1982. Although county department of mental health, division of forensic services, acts at direction of order of court, it does so in unbiased impartial manner, and even if its report contains "negative conclusions" as to one of parties, such does not constitute "hostility" for purposes of discovery under "special circumstance rule."—Feuerman v. Feuerman, 447 N.Y.S.2d 838, 112 Misc.2d 961.—Pretrial Proc 382.

NEGATIVE COVENANT

Ill. 1896. The term "negative covenant," and not the word "condition," is correctly used to designate a provision in a deed that the premises thereby conveyed are not to be used for saloon purposes.—Star Brewery Co. v. Primas, 45 N.E. 145, 163 Ill. 652.

N.Y.Sup. 1962. A "negative covenant" is one which prohibits owner of servient estate from doing something on his property which is lawful but would adversely affect dominant estate.—City of New York v. Turnpike Development Corp., 233 N.Y.S.2d 887, 36 Misc.2d 704.—Covenants 49.

NEGATIVE COVENANTS

Ind.App. 2001. "Negative covenants" call for the covenantor to refrain from doing some act.—Howell v. Hawk, 750 N.E.2d 452.—Covenants 1.

Ind.App. 1999. "Negative covenants" call for the covenantor to refrain from doing some act.—Columbia Club, Inc. v. American Fletcher Realty Corp., 720 N.E.2d 411, transfer denied 735 N.E.2d 229.—Covenants 21.

N.C.App. 1978. Requirements for a "covenant to run with the land" are to be more strictly applied to "affirmative covenants" than "negative covenants".—Raintree Corp. v. Rowe, 248 S.E.2d 904, 38 N.C.App. 664.—Covenants 53.

NEGATIVE CRITERIA

D.N.J. 1999. The "negative criteria" required to be set forth in application for conditional use variance, under New Jersey law, is proof that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. N.J.S.A. 40:55D-70, subd. d(3).—Cellular Telephone Co. v. Board of Adjustment of Borough of Paramus, 37 F.Supp.2d 638, affirmed 191 F.3d 444.—Zoning 533.

D.N.J. 1998. Under New Jersey law, "negative criteria" for determining whether to grant conditional use variance for proposed use that is not inherently beneficial focus on effect that use will have on adjacent property to determine whether it will cause such damage to character of neighborhood as to constitute substantial detriment to public good, and on whether variance is reconcilable with municipality's legislative determination that condition should be imposed on all conditional uses in that zoning district. N.J.S.A. 40:55D-70, subd. d(3).—Cellular Telephone Co. v. Zoning Bd. of Adjustment of Borough of Ho-Ho-Kus, 24 F.Supp.2d 359, affirmed in part, reversed in part 197 F.3d 64.—Zoning 490.

N.J.Super.A.D. 1994. Applicant for use variance must show that special reasons exist for variance ("positive criteria"), and that variance can be granted without substantial detriment to public good and without substantially impairing intent and purpose of zone plan and zoning ordinance ("negative criteria"). N.J.S.A. 40:55D-70, subd. d.—Kali Bari Temple v. Board of Adjustment of Tp. of Readington, 638 A.2d 839, 271 N.J.Super. 241.—Zoning 489, 490.

N.J.Super.A.D. 1988. Applicant for use "variance" must establish "special reasons" for grant of variance and also satisfy "negative criteria"—requiring that no substantial detriment to public good or substantial impairment of intent and purpose of

zoning plan and ordinance result from grant of variance—rather than balancing them against each other. N.J.S.A. 40:55D-70.—Medical Realty Associates v. Board of Adjustment of City of Summit, 549 A.2d 469, 228 N.J.Super. 226.—Zoning 490.

NEGATIVE DECLARATION

Cal.App. 3 Dist. 1982. A “negative declaration” is written statement by responsible public agency that proposed project will not have significant impact on environment and does not require preparation of environmental impact report giving reasons for such conclusion. West’s Ann.Pub.Res.Code § 21064.—Asia Investment Co. v. Borowski, 184 Cal.Rptr. 317, 133 Cal.App.3d 832, 30 A.L.R.4th 561.—Environ Law 594.

Cal.App. 4 Dist. 1994. When proposed project may have significant effect on environment, California Environmental Quality Act (CEQA) requires lead agency to undertake initial threshold study; if study results in finding that project will not significantly affect environment, agency may so declare in “negative declaration.” West’s Ann.Cal.Pub.Res.Code § 21050 et seq.—Dixon v. Superior Court, 36 Cal.Rptr.2d 687, 30 Cal.App.4th 733, review denied.—Environ Law 578.

NEGATIVE DEFENSE

W.D.Pa. 1964. Denial by defendants, who owned truck involved in accident, in their answer that driver of truck was employed by them was “negative defense” as distinguished from “affirmative defense,” and copies of agreements by which defendants leased truck to third party were admissible without defendants affirmatively pleading leases under Federal Rules of Civil Procedure dealing with pleading of “affirmative defenses.” Fed.Rules Civ.Proc. rule 8(c), 28 U.S.C.A.—Porto v. Peden, 233 F.Supp. 178.—Fed Civ Proc 887.

Hawai’i 1966. Fact that defendants pleaded in explanation and support of their denial of charge by plaintiffs of fraud in procurement of signatures of plaintiffs to deed to defendants, trust agreement and understanding under heading of “affirmative defense” did not actually make defense an “affirmative defense,” and it was in actuality a “negative defense” by which evidence was pleaded as explanation of denial of allegation of fraud.—Chun Chew Pang v. Chun Chew Kee, 412 P.2d 326, 49 Haw. 62.—Plead 4.

NEGATIVE EASEMENT

U.S.Dist.Col. 1950. Where a right consists in restraining an owner from doing that with, and upon, his property which, but for the grant or covenant he might lawfully have done, it is an “easement” sometimes called a “negative easement” or an “amenity.”—Chapman v. Sheridan-Wyoming Coal Co., 70 S.Ct. 392, 338 U.S. 621, 94 L.Ed. 393.—Ease 2.

Cal.App. 4 Dist. 1931. Restriction that lots be used for one-family residence only is merely right enforceable in equity between contracting parties or successors with notice in nature of “negative ease-

ment” or “equitable servitude.”—Sackett v. Los Angeles City School Dist. of Los Angeles County, 5 P.2d 23, 118 Cal.App. 254.—Covenants 69(2).

Ill.App. 1 Dist. 1989. “Negative easement” precludes owner of land subject to the easement from doing an act which, but for the easement, the owner would be entitled to do.—Friedman v. Gingiss, 130 Ill.Dec. 738, 537 N.E.2d 1067, 182 Ill.App.3d 293.—Covenants 49.

Ill.App. 1 Dist. 1941. That an agreement restricting the use and sale of premises was executed and recorded after execution and recording of trust deed did not make premises subject to the agreement as a “covenant running with the land” or a “negative easement.”—State Life Ins. Co. v. Freeman, 31 N.E.2d 375, 308 Ill.App. 127.—Mtg 178.

Iowa 1964. “Negative easement” is right in owner of dominant tenement to restrict owner of servient tenement in exercise of general and natural rights of property.—Fort Dodge, D. M. & S. Ry. v. American Community Stores Corp., 131 N.W.2d 515, 256 Iowa 1344.—Covenants 1.

Mo. 1953. An “affirmative easement” is one which authorizes the doing of acts which, if no easement existed, would give rise to a right of action, while a “negative easement” is one which precludes owner of land subject to such easement from doing an act which, if no easement existed, he would be entitled to do.—Wilson v. Owen, 261 S.W.2d 19.—Ease 1.

Mo.App. 1975. A covenant imposing valid restrictions upon lots within a given area is a “negative easement” precluding servient owners from certain use of the land to which they would otherwise be entitled; such covenants are property rights running with the land.—Buoncristiani v. Randall, 526 S.W.2d 68.—Covenants 69(1).

Mo.App. 1957. A covenant imposing valid restrictions upon lots within a given area is a “negative easement” which precludes the owner of the land subject to the easement from the doing of an act which, if no easement existed, he would be entitled to do.—Tracy v. Klausmeyer, 305 S.W.2d 84.—Covenants 84.

Mo.App. 1956. A “negative easement” is one effect of which is not to authorize doing of act by person entitled to easement, but merely to preclude owner of land subject to easement from doing of an act which, if no easement existed, he would be entitled to do.—McLaughlin v. Neiger, 286 S.W.2d 380.—Ease 2.

Mo.App. 1908. A “negative easement” is a right in the owner of the dominant tenement to restrict the owner of the servient tenement in respect of the tenement in the exercise of general and natural rights of property, such as rights of light and air.—Bernero v. McFarland Real Estate Co., 114 S.W. 531, 134 Mo.App. 290.

Mont. 1937. “Affirmative easement” is one which authorizes the doing of acts which, if no easement existed, would give rise to a right of action, and the “negative easement” is one, the

effect of which is to preclude the owner of the land subject to the easement from doing that which, if no easement existed, he would be entitled to do.—*Northwestern Improvement Co. v. Lowry*, 66 P.2d 792, 104 Mont. 289, 110 A.L.R. 605.—Ease 1.

Mont. 1937. Covenant, in deed of original town-site grantor, which provided for reverter if premises should be used by grantee or his assigns as a place for sale of liquors, held to create a “negative easement” in which the remaining lands of the grantor were the “dominant tenement” and the lot conveyed was the “servient tenement”. *Rev.Codes 1935*, § 6749, subd. 6.—*Northwestern Improvement Co. v. Lowry*, 66 P.2d 792, 104 Mont. 289, 110 A.L.R. 605.—Ease 13.

N.Y. 1975. A “negative easement” is one which restrains a landowner from making certain use of his land which he might otherwise have lawfully done but for that restriction and such easements arise principally by express grant or by implication.—*Huggins v. Castle Estates, Inc.*, 369 N.Y.S.2d 80, 36 N.Y.2d 427, 330 N.E.2d 48.—*Covenants 1*.

N.Y. 1902. The right of an owner of a dominant tenement to restrict the owner of the servient tenement in the exercise of general and natural rights of property, is sometimes called a “negative easement.” Such an easement was created where the owner of a building conveyed three inches of land to an adjoining owner, with the right to use his party wall, in consideration of a covenant by the grantee, stipulated to run with the land, that she would not during a specified time use the building to be erected for a saloon.—*Uihlein v. Matthews*, 64 N.E. 792, 172 N.Y. 154.

N.Y.Sup. 1956. A “negative easement” is the right in the owner of the dominant tenement to restrict the owner of the servient tenement in the exercise of general and natural rights of property, and is an interest in land which can pass only by deed and is in a legal sense an incumbrance.—*Warren v. Protano, Inc.*, 155 N.Y.S.2d 686.—*Covenants 1*, 80.

N.Y.Sup. 1934. A restrictive covenant in a lease is, in effect, an “easement,” or as it is sometimes called an “amenity,” and consists in restraining owner from doing that with, and upon, his property which, but for grant or covenant, he might lawfully have done, and hence it is to be called a “negative easement,” as distinguished from that class of easements which compels the owner to suffer something to be done upon his property by another.—*South Buffalo Stores v. W.T. Grant Co.*, 274 N.Y.S. 549, 153 Misc. 76, affirmed as modified 289 N.Y.S. 918, 248 A.D. 668, affirmed 8 N.E.2d 335, 273 N.Y. 660.

N.Y.Sup. 1893. An “amenity” consists in restraining the owner from doing that with and on his property which, but for the grant or covenant, he might lawfully have done, and is sometimes called a “negative easement,” as distinguished from that class of easements which compels the owner to suffer something to be done on his property by another.—*Equitable Life Assur. Soc. v. Brennan*, 30 Abb. N. Cas. 260, 24 N.Y.S. 784, affirmed 57

N.Y.St.Rep. 35, 26 N.Y.S. 600, 74 Hun 576, reversed 43 N.E. 173, 148 N.Y. 661.

N.C. 1925. “Negative easement” defined.—*Davis v. Robinson*, 127 S.E. 697, 189 N.C. 589.—Ease 1.

N.C. 1925. Building restriction in deed is “negative easement.”—*Davis v. Robinson*, 127 S.E. 697, 189 N.C. 589.—Ease 13.

N.D. 1966. “Negative easement” is one effect of which is not to authorize the doing of an act by person entitled to the easement, but merely to preclude owner of land subject to easement from doing that which, if no easement existed, he would be entitled to do.—*Putnam v. Dickinson*, 142 N.W.2d 111.—Ease 50.

Tex.Com.App. 1924. An “affirmative easement” is one which gives owner of dominant tenement right to use servient tenement or do some act thereon which would otherwise be unlawful, while a “negative easement” restricts owner of servient estate in his use of his land in favor of owner of dominant tenement.—*Miller v. Babb*, 263 S.W. 253.—Ease 1.

Tex.Civ.App.—Eastland 1944. A “negative easement” is one in which the owner of the servient tenement is by reason thereof restricted in some of his rights in respect to his lands, in favor of the owner of the dominant tenement.—*Clements v. Taylor*, 184 S.W.2d 485.—Ease 2.

Va. 1999. A “negative easement” is one in which the owner of the servient tract agrees to refrain from certain uses of his land.—*Prospect Development Co., Inc. v. Bershader*, 515 S.E.2d 291, 258 Va. 75.—Ease 1.

Va. 1999. A “negative easement” does not bestow upon the owner of the dominant tract the right to travel physically upon the servient estate, but rather requires that the owner of the servient estate refrain from undertaking certain activities on the servient estate which the owner would otherwise be entitled to perform.—*Prospect Development Co., Inc. v. Bershader*, 515 S.E.2d 291, 258 Va. 75.—Ease 1.

W.Va. 1976. Easements may be classified as affirmative or negative; when the event of a restriction is to preclude an owner of land from doing something he otherwise would be entitled to do, it is considered a “negative easement.”—*Bennett v. Charles Corp.*, 226 S.E.2d 559, 159 W.Va. 705.—Ease 13.

Wyo. 1985. Holder of a “negative easement” has, by virtue of such an interest, no right to active use, but merely the right to insist that burdened party refrain from certain uses or uses in certain areas.—*Cheyenne Airport Bd. v. Rogers*, 707 P.2d 717, appeal dismissed 106 S.Ct. 1961, 476 U.S. 1110, 90 L.Ed.2d 647.—Ease 13.

NEGATIVE EASEMENTS

Ct.Cl. 1946. Easements may be “affirmative easements” which authorize the doing of acts which, if no easement existed, would give rise to

right of action, and "negative easements" which do not authorize the doing of an act by person entitled to easement but merely preclude owner of land subject to easement from doing the act which, if no easement existed, he would be entitled to do.—*Camp Far West Irr. Dist. v. U.S.*, 68 F.Supp. 908, 107 Ct.Cl. 263.—Ease 2.

Conn. 1934. Restrictions in deeds imposed pursuant to general plan of development of restricted tract constituted "negative easements" which could be enforced by any grantee against any other grantee; each parcel becoming dominant and servient tenement.—*Hickson v. Noroton Manor, Inc.*, 171 A. 31, 118 Conn. 180.—Covenants 79(3).

Conn. 1933. Restrictions for general improvement upon use of lots in subdivision constitute "negative easements" which are enforceable by any grantee against any other grantee; each lot being both a dominant and a servient tenement.—*Bickell v. Morais*, 167 A. 722, 117 Conn. 176.—Covenants 79(3).

Mo. 1953. Building restrictions, sanitary stipulation as to disposition of refuse and covenant against conveyance of land to or occupancy by other than white persons were restrictive covenants in the nature of "negative easements."—*Wilson v. Owen*, 261 S.W.2d 19.—Covenants 49.

Wash. 1986. An "easement" is right, distinct from ownership, to use in some way the land of another, without compensation, whereas "restrictive covenant" limits manner in which one may use his or her own land; such covenants are frequently described as "negative easements" in context of tax cases.—*City of Olympia v. Palzer*, 728 P.2d 135, 107 Wash.2d 225.—Covenants 49; Ease 1.

NEGATIVE EQUITABLE EASEMENT

Ind.App. 1935. Generally, where common grantor opens up tract of land to be sold in lots and blocks and before any lots are sold, inaugurates general scheme of improvement for entire tract intended to enhance value of each lot, and each lot subsequently sold is made subject to such scheme of improvement, there is created and annexed to entire tract a "negative equitable easement," in which several purchasers of lots have interest, and between whom there exists mutuality of covenant and consideration.—*Bachman v. Colpaert Realty Corp.*, 194 N.E. 783, 101 Ind.App. 306.—Covenants 79(1).

NEGATIVE EQUITY

D.Mass. 1985. "Negative equity" assessments made by Commonwealth of Massachusetts Rate Setting Commission upon debtor nursing homes in determining medicaid reimbursement were "penalties" under federal bankruptcy law, and accordingly, state official would be enjoined from reducing any future reimbursement payment to debtor homes by any amount attributable to operation of Commonwealth's negative equity regulations in calculating final reimbursement rates for debtor homes, although state officials claimed assessments were intended to compensate Commonwealth for debtor homes' increased operating costs; purpose of regu-

lation was actually to regulate and affect provider's financial affairs.—*In re Erlin Manor Nursing Home, Inc.*, 86 B.R. 307.—Bankr 2371(1).

NEGATIVE EVIDENCE

C.A.8 (Mo.) 1955. In action by farm employee against manufacturer of hay baler for injuries sustained when employee became caught in baler, wherein issue was whether manufacturer's representative had instructed employee to operate baler as he had done, representative's testimony that this employee and employer's father had not been present at time representative had demonstrated use of machine and that demonstration made had been of a totally different use of machine was not "negative evidence," such as could be subject to any mechanical basis or standard of probative weight, and according it weight as negative evidence was error.—*Allis Chalmers Mfg. Co. v. Wichman*, 220 F.2d 426, certiorari denied 76 S.Ct. 71, 350 U.S. 835, 100 L.Ed. 745.—Evid 586(3).

C.C.A.10 (Colo.) 1941. In action arising out of collision between truck and locomotive at crossing occurring in Colorado, truck driver's testimony that there was no bell or whistle warning signal was more than "negative evidence", as respects weight thereof, where driver further testified with respect to conditions existing at time he approached crossing and bearing on his ability to hear bell had it been ringing, from which jury could have reasonably concluded that he would have heard the bell had it been ringing.—*Union Pac. R. Co. v. Burnham*, 124 F.2d 500.—Evid 586(3).

C.C.A.7 (Ill.) 1941. In action against railway company's receivers and administratrix of decedent's estate for injuries sustained when decedent's automobile struck a train on an afternoon when it was cloudy and rainy, where affirmative evidence was that automatic bell on train was constantly ringing and that whistle was sounded 1,500 feet from crossing, testimony of plaintiff, who was riding in automobile with windows closed, and that he did not hear bell and heard whistle just before crash, was "negative evidence" and did not raise an issue of fact.—*Robins v. Pitcairn*, 124 F.2d 734.—Evid 586(0.5); Trial 137.

C.C.A.3 (Pa.) 1945. The "negative evidence" rule has been adopted by federal courts, but its application depends on the circumstances of each case.—*Eiseman v. Pennsylvania R. Co.*, 151 F.2d 222.—Fed Civ Proc 2147.

C.C.A.3 (Pa.) 1945. If witness who testified that he did not hear bell ringing on locomotive which struck plaintiff's decedent was in a position where "in all probability" he would have heard a bell signal if one had been given, witness' testimony was more than "negative evidence" and presented question for jury on issue of giving bell signal.—*Eiseman v. Pennsylvania R. Co.*, 151 F.2d 222.—Fed Civ Proc 2147.

Alaska App. 1987. Where party relies on "negative evidence," i.e., testimony that witness did not see event in order to support inference that event did not occur, rule is that person allegedly witness-

ing event must have been in position to see it.—*Esmailka v. State*, 740 P.2d 466.—Crim Law 551.

D.C. 1996. “Negative evidence,” or evidence tending to prove nonexistence of a fact, has some probative value.—*Hummer v. Levin*, 673 A.2d 631.—Evid 147.

Ga.App. 1941. Testimony of physician who treated compensation claimant for injuries that claimant had fully recovered, was able to resume work, and suffered no permanent disability, was sufficient to sustain an award of the Industrial Board denying claimant additional compensation, as against claimant’s contention that the testimony was “opinion evidence” and “negative evidence” without probative value.—*Walker v. U.S. Fidelity & Guaranty Co.*, 13 S.E.2d 526, 64 Ga.App. 459.—Work Comp 2030.

Ga.App. 1923. “Negative evidence” does not amount to no evidence at all, and jurors are not obliged to discard it merely because of the existence of positive evidence in conflict therewith.—*Georgia R. & Banking Co. v. Wallis*, 116 S.E. 883, 29 Ga.App. 706.

Ill.App.1 Dist. 1950. Testimony of witness that he heard no bell or whistle from train striking decedent was not merely “negative evidence” without probative force to raise issue whether signals were sounded, in view of other testimony.—*Lange v. Pennsylvania R. Co.*, 96 N.E.2d 637, 342 Ill.App. 335.—Evid 586(3).

Ind.App.3 Dist. 1991. “Negative evidence” is generally defined as testimony that an alleged fact did not exist, and absence of any testimony about motorist having sounded her horn was not negative evidence which could support a finding that the horn was not sounded.—*Lewis by Lewis v. Bona-hoom*, 583 N.E.2d 175.—Evid 147.

Ky. 1933. “Positive evidence” is testimony which intrinsically shows witness had opportunity to observe and did observe, and “negative evidence” is testimony that does not of itself show that.—*Gardner v. Lincoln Bank & Trust Co.*, 64 S.W.2d 497, 251 Ky. 109.—Evid 386(1).

La.App.Orleans 1941. Testimony of hospital visitor, who slipped and fell on floor of hospital corridor, and visitor’s witnesses, that they did not observe warning signs nor see hospital employee operating polishing machine at time visitor fell, was “negative evidence” which was insufficient to overcome positive statements of other witnesses that the signs were there and that they were displayed in prominent places where anyone could see them.—*Lusk v. U. S. Fidelity & Guar. Co.*, 199 So. 666.—Evid 586(3).

La.App.Orleans 1939. In action for illness allegedly caused by eating deleterious food in defendant’s restaurant, evidence, that defendant maintained a clean and up-to-date establishment and that shrimp and other materials used in making salad consumed by plaintiffs were fresh and that no other patrons who partook of shrimp salad on day in question made complaint or claimed to have been made ill as result of consuming it, was “nega-

tive evidence” which was properly weighed against plaintiffs’ evidence but of itself not sufficient to establish that food was in fact wholesome and that it was free from latent defects.—*Ogden v. Rosedale Inn*, 189 So. 162.—Evid 147, 586(3).

Mo. 1943. In motorist’s action against street railroad arising out of intersection collision, motorist’s testimony that his window was down enough to let normal sounds in, that his eyes and ears were good, and that he looked and listened but did not see street car or hear gong, was “negative evidence” but was “substantial evidence” of car’s distance, speed and failure to sound gong.—*Paisley v. Kansas City Public Service Co.*, 173 S.W.2d 33, 351 Mo. 468.—Evid 586(1), 586(3).

N.C. 1940. In actions for death of two occupants of automobile in railroad crossing collision, where there was testimony of apparently credible witness, who claimed to have been about 400 feet from crossing at time of accident, that whistle or bell on engine did not sound, a special instruction, given at request of railroad which characterized plaintiff’s evidence as to sounding of bell or whistle as “negative evidence” and “weak,” constituted a direct expression of opinion on weight of evidence entitling plaintiff to a new trial.—*Carruthers v. Atlantic & Yadkin Ry. Co.*, 9 S.E.2d 498, 218 N.C. 49, on rehearing 11 S.E.2d 157, 218 N.C. 377.—Trial 194(17).

N.C. 1938. “Negative evidence,” meaning testimony that an alleged fact did not exist, although weak, is admissible, if the witness’ situation was such that he could have known of it had it existed.—*K. B. Johnson & Sons v. Southern Ry. Co.*, 199 S.E. 704, 214 N.C. 484.—Evid 147.

Pa.Super. 1947. Where defendant motorist and witness were in a position where they could observe whether headlight on plaintiff’s motorcycle was sufficiently bright to be seen on rainy night, and they diligently exercised their faculties, their testimony that headlight was not visible was “affirmative evidence” and not “negative evidence.”—*Bobst v. Bobst*, 51 A.2d 414, 160 Pa.Super. 340, reversed 54 A.2d 898, 357 Pa. 441.

Va. 1965. Testimony of witnesses who were 75 to 100 feet from railroad crossing where train struck truck that they watched train go by, that they looked and listened, that no locomotive bell was rung, and that they were surprised that bell was not rung was not mere “negative evidence” but was “positive evidence” and was sufficient to make issue of fact to be decided by jury in truck driver’s personal injury action against railroad.—*Chesapeake & O. Ry. Co. v. Kinzer*, 142 S.E.2d 514, 206 Va. 175.—Evid 586(1); R R 350(7.1).

Wash. 1947. Where a witness was so situated that in the ordinary course of events he would have heard or would have seen something had it occurred, witness’ negative evidence that he did not see or did not hear is properly admitted as “negative evidence.”—*Pollard v. Wittman*, 183 P.2d 175, 28 Wash.2d 367.—Evid 147.

Wash. 1947. Where defendant motorist and witness were in a position where they could observe whether headlight on plaintiff's motorcycle was sufficiently bright to be seen on rainy night, and they diligently exercised their faculties, their testimony that headlight was not visible was "affirmative evidence" and not "negative evidence." Rem.Rev. Stat. § 6360-25.—Pollard v. Wittman, 183 P.2d 175, 28 Wash.2d 367.—Evid 147.

Wis. 1909. In weighing contradictory evidence, other things being equal, "positive evidence" preponderates over "negative evidence"; but the jury must take into consideration the circumstances, such as opportunity and attention of the witnesses.—Anderson v. Horlick's Malted Milk Co., 119 N.W. 342, 137 Wis. 569.

NEGATIVE EVIDENCE ARGUMENT

Md.App. 1988. Defendant may attack State's case by arguing that State has neglected to secure and/or present some item of evidence; argument, called "negative evidence argument," is proper however, only if absence is unexplained.—Ford v. State, 534 A.2d 992, 73 Md.App. 391.—Crim Law 721.5(1).

NEGATIVE EVIDENCE OF CHARACTER

R.I. 1997. Testimony on absence of a character trait, such as violence, is "negative evidence of character."—State v. Lambert, 705 A.2d 957.—Crim Law 387.

NEGATIVE EVIDENCE RULE

Ariz. 1961. The "negative evidence rule" concerns establishment of existence or nonexistence of fact, e. g., whether certain notice was posted or whether certain bell was ringing.—Coyner Crop Dusters v. Marsh, 367 P.2d 208, 90 Ariz. 157, on rehearing 372 P.2d 708, 91 Ariz. 371.—Evid 586(1).

NEGATIVE FACT

N.C. 1940. The omission of a legal duty for which actionable negligence may be imputed is a "negative fact."—Carruthers v. Atlantic & Yadkin Ry. Co., 9 S.E.2d 498, 218 N.C. 49, on rehearing 11 S.E.2d 157, 218 N.C. 377.—Evid 147.

NEGATIVE FINDING

Kan. 2002. Trial court's finding that a will was not the product of undue influence is a "negative finding."—In re Estate of Farr, 49 P.3d 415.—Wills 334.

Kan. 2002. "Negative finding" indicates that the party with the burden of proof failed to sustain that burden.—In re Estate of Farr, 49 P.3d 415.—Trial 404(1).

Kan. 2000. A "negative finding" means the party with the burden of proof failed to meet that burden, and an appellate court will not disturb such a finding absent proof of an arbitrary disregard of undisputed evidence or some extrinsic circumstance such as bias, passion, or prejudice.—In re Estate of

Haneberg, 14 P.3d 1088, 270 Kan. 365.—App & E 1008.1(1); Trial 404(1).

Kan. 1997. "Negative finding," which indicates party upon whom burden of proof is cast did not sustain requisite burden, will not be disturbed on appeal absent proof of arbitrary disregard of undisputed evidence or some extrinsic consideration such as bias, passion, or prejudice.—Brown v. Kansas Parole Bd., 943 P.2d 1240, 262 Kan. 903.—App & E 1008.1(1).

Kan.App. 2000. When a trial court makes a negative finding, the party challenging that finding must prove arbitrary disregard of undisputed evidence or some extrinsic consideration such as bias, passion, or prejudice; a "negative finding" signifies the failure of the party upon whom the burden of proof was cast to sustain it.—Belot v. Unified School Dist. No. 497, Douglas County, 4 P.3d 626, 27 Kan.App.2d 367.—App & E 1008.1(1).

NEGATIVE GROUP

D.Del. 1946. The term "negative group" means any modification of the organic residue, and includes carbonyl groups, unsaturated groups, halogens, other thiocyanate groups, hydroxyl groups, ether linkages, cyanide groups, acid radicals, alkoxy, or ether groups and oxygen, sulphur, iodine and other negative groups.—Hercules Powder Co. v. Rohm & Haas Co., 66 F.Supp. 899.

NEGATIVE IMPLIED WARRANTY OF SEAWORTHINESS

S.D.N.Y. 1997. Under "negative implied warranty of seaworthiness," insured promises not to knowingly send vessel to sea in unseaworthy condition.—Continental Ins. Co. v. Lone Eagle Shipping Ltd. (Liberia), 952 F.Supp. 1046, affirmed, appeal dismissed in part 134 F.3d 103.—Insurance 3058.

NEGATIVE IN CHARACTER

N.Y.Supp. 1921. A restrictive covenant, as applied to land, creates what is known in law as an "easement"; that is, a servitude without any profit whatever out of the substance of the neighboring tenement, but merely the right to claim from it submission or forbearance, and it is "negative in character" when the owner of the servient tenement is restricted in the exercise of the natural rights of property by the existence of the easement.—Perpall v. Gload, 190 N.Y.S. 417, 116 Misc. 571, affirmed 196 N.Y.S. 946, 203 A.D. 871.—Covenants 49.

NEGATIVE INSTRUCTION

Wash.App. Div. 3 1970. "Negative instruction," being one which sets forth matters which will not support conviction, is not required.—State v. Hanigan, 475 P.2d 886, 3 Wash.App. 529.—Crim Law 770(2).

NEGATIVE JUDGMENT

Ind. 1998. To extent that petitioner seeking postconviction relief has been denied relief by postconviction court, petitioner appeals from a "nega-

tive judgment,” for purposes of principle that, when a petitioner appeals from a negative judgment, he or she must convince the appeals court that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the trial court; this is because, at trial on petition for post-conviction relief, petitioner has burden of establishing any grounds for relief by a preponderance of the evidence. Post Conviction Rule 1, § 5.—*Miller v. State*, 702 N.E.2d 1053, rehearing denied, certiorari denied 120 S.Ct. 806, 528 U.S. 1083, 145 L.Ed.2d 679.—Crim Law 1158(1).

Ind. 1995. To the extent that postconviction petitioner appealed from denial of relief, he was appealing from “negative judgment” which would not be overturned unless appellate tribunal was convinced that evidence as a whole was such that it led unerringly and unmistakably to decision opposite that reached by the trial court.—*Spranger v. State*, 650 N.E.2d 1117, rehearing denied.—Crim Law 1158(1).

Ind.App. 2002. A “negative judgment” is one entered against a party who bears the burden of proof, while an “adverse judgment” is one entered against a party defending on a given question.—*Garling v. Indiana Dept. of Natural Resources*, 766 N.E.2d 409.—Judgm 1.

Ind.App. 1997. Grandmother’s appeal of trial court’s denial of petition for visitation with grandchild was appeal from “negative judgment,” as grandmother had burden of proof at trial, and thus grandmother was required to show on appeal that evidence pointed unerringly to conclusion different from that reached by trial court.—*Kennedy v. Kennedy*, 688 N.E.2d 1264, transfer denied 690 N.E.2d 1189.—Child C 922(6).

Ind.App. 2 Dist. 1995. Appellants who had burden of proof at trial appeal from “negative judgment” and must show that the evidence points unerringly to a conclusion different from that reached by the trier of fact.—*Daugherty v. Ritter*, 646 N.E.2d 66, opinion adopted 652 N.E.2d 502.—App & E 996.

Ind.App. 5 Dist. 1994. Where party has burden of proof at trial concerning issue and appeals this issue, party appeals from a “negative judgment,” and must demonstrate that the evidence points unerringly to conclusion different from that reached by jury; reviewing court will reverse negative judgment only if decision of jury is contrary to law.—*Buckland v. Reed*, 629 N.E.2d 1241.—App & E 996.

Ind.App. 1 Dist. 1991. “Negative judgment” is one entered against party who bears burden of proof, while “adverse judgment” is one entered against party defending on given question. Trial Procedure Rule 52(A).—*Vanderburgh County Bd. of Com’rs v. Rittenhouse*, 575 N.E.2d 663, transfer denied.—Judgm 1.

Ind.App. 4 Dist. 1984. Transferor’s appeal from judgment that execution and delivery to her sister of deed to real property was gift was appeal from “negative judgment,” i.e., judgment which was en-

tered adverse to position of party who bore burden of proof, and thus, standard of review was whether judgment was clearly erroneous, since relationship as sisters between parties did not make sister fiduciary as to transferor, with result that transferor bore burden of proving existence of confidential relationship between them which in turn would raise presumption of undue influence. Trial Procedure Rule 52(A)(3).—*Lucas v. Frazee*, 471 N.E.2d 1163.—App & E 989.

NEGATIVE KNOWLEDGE

Iowa 1907. “Negative knowledge” is the testimony that a fact did not occur, founded on the witness’ failure to hear and see a fact which he would supposedly have heard or seen if it had occurred, and the only requirement is that the witness should have been so situated that, in the ordinary course of events, he would have heard or seen the fact, had it occurred.—*Hoffard v. Illinois Cent. Ry. Co.*, 110 N.W. 446, 138 Iowa 543, 16 L.R.A.N.S. 797.

Minn. 1906. Testimony that a fact did not occur, founded on a witness’ failure to hear or see a fact which he could supposedly have heard or seen if it had occurred, is based on what is called “negative knowledge.”—*Cotton v. Willmar & S. F. Ry. Co.*, 109 N.W. 835, 99 Minn. 366, 8 L.R.A.N.S. 643, 116 Am.St.Rep. 422, 9 Am.Ann.Cas. 935.

NEGATIVE LIBERTY

E.D.Pa. 1985. A “negative liberty” is freedom from state interference or intrusion, in effect, being let alone by state. U.S.C.A. Const.Amend. 14.—*Baldi v. City of Philadelphia*, 609 F.Supp. 162.—Const Law 82(6.1).

NEGATIVELY AFFECTING

C.A.8 (Minn.) 1995. “Negatively affecting” interstate commerce is not same as “discrimination” against interstate commerce for purposes of commerce clause analysis; in commerce clause context, “discrimination” means differential treatment of in-state and out-of-state economic interests that benefits former and burdens latter. U.S.C.A. Const. Art. 1, § 8, cl. 3.—*Cotto Waxo Co. v. Williams*, 46 F.3d 790.—Commerce 13.5.

NEGATIVELY MODIFIES

Bkrcty.S.D.Ohio 1992. Chapter 13 plan under which mortgagee with second mortgage in debtor’s principal residence would pay mortgagee over period in excess of 55 months at rate of ten percent “negatively modifies” mortgagee’s rights in manner prohibited by Bankruptcy Code, and thus could not be confirmed; contract called for annual percentage rate of 20.30 percent, and mortgagee would receive slower repayment than it was entitled to receive under its contract and at discount factor significantly lower than rate of interest under loan. Bankr.Code, 11 U.S.C.A. §§ 506(a), 1322(b)(2), 1325(a)(5)(B).—*In re Weber*, 140 B.R. 707.—Bankr 3708(9).

NEGATIVE ORDER

D.Neb. 1933. Order of Secretary of Agriculture determining that reweigh charge imposed by stockyards was not unlawfully discriminatory *held* "negative order" not reviewable by court. Packers and Stockyards Act 1921, §§ 301, 316, 7 U.S.C.A. §§ 201, 217.—*Inghram v. Union Stock Yards Co. of Omaha*, 5 F.Supp. 486.—Wareh 2.

NEGATIVE ORDERS

U.S.N.Y. 1939. Where statute exempted from jurisdiction of Federal Communications Commission carriers engaged in interstate or foreign communication solely through physical connection with facilities of another carrier not directly or indirectly controlling or controlled by or under direct or indirect common control with such carrier, order of Commission determining that telephone company was subject to jurisdiction of Commission and directing that company comply with previously formulated mandatory orders addressed generally to all carriers amenable to the Commission's authority was reviewable, the "negative orders" doctrine being discarded. Urgent Deficiencies Act, 28 U.S.C.A. §§ 1253, 2101, 2284, 2323–2325; Fed. Rules Civ.Proc. 28 U.S.C.A.; Communications Act 1934, §§ 2(b), 402(a), 47 U.S.C.A. §§ 152(b), 402(a); U.S.C.A. Const. art. 3.—*Rochester Telephone Corporation v. U.S.*, 59 S.Ct. 754, 307 U.S. 125, 83 L.Ed. 1147.—Tel 33.

NEGATIVE PLEDGE

Bkrtcy.W.D.Okla. 1984. "Negative pledge" is merely an agreement to forbear from taking some manner of action.—*In re Continental Resources Corp.*, 43 B.R. 658, appeal decided 799 F.2d 622.—Contracts 71(1).

Cal. 1971. Covenant against conveyance and encumbrances is sometimes referred to as a "negative pledge" agreement.—*Tahoe National Bank v. Phillips*, 480 P.2d 320, 92 Cal.Rptr. 704, 4 Cal.3d 11.—Covenants 41, 42(1).

NEGATIVE PREGNANT

App.D.C. 1934. "Negative pregnant" is that form of denial which implies affirmative.—*Cramer v. Aiken*, 68 F.2d 761, 63 App.D.C. 16.—Plead 126.

W.D.N.Y. 1928. Denial, on information and belief, of allegation respecting damage to grain transported in exact wording of libel, held insufficient as "negative pregnant" (Admiralty Rule 26 (28 USCA 723)). Denial on information and belief that libellant suffered serious damage, and denial of necessity of discharging part of cargo of grain because of its impaired condition, repeating exact wording of allegation of libel, was insufficient as against exception in nature of demurrer as being "negative pregnant," implying an affirmative in failing to comply with Admiralty Rule 26 (28 USCA 723), because libellant was unable to ascertain therefrom whether there was a denial or an admission of the damaged condition of the grain, and whether there was a denial or an admission of necessity of discharging and reconditioning grain.—*Canadian Co-op. Wheat*

Producers v. Mathews S.S. Co., 52 F.2d 495.—Adm 61.

W.D.N.Y. 1928. Denial, on information and belief, of allegation respecting damage to grain transported in exact wording of libel, held insufficient as "negative pregnant". Admiralty Rule 26, 28 U.S.C.A.—*Canadian Co-op. Wheat Producers v. Mathews S.S. Co.*, 52 F.2d 495.—Adm 61.

Ark. 1903. Where a plaintiff alleges that he is and has been for the last 10 years the owner and in possession of land, an answer denying that plaintiff is and has been for the last 10 years the owner and in possession of the land, is in form a "negative pregnant".—*J.I. Porter Lumber Co. v. Hill*, 77 S.W. 905, 72 Ark. 62.

Cal.App. 1 Dist. 1939. Finding that all allegations of certain portion of defendants' answer, which, if true, would preclude judgment for plaintiff, were not true, constituted finding in form of "negative pregnant" and in effect found such allegations as true, and hence did not support judgment for plaintiff.—*Austin v. Harry E. Jones, Inc.*, 86 P.2d 379, 30 Cal.App.2d 362.—Trial 404(1).

Cal.App. 2 Dist. 1955. Findings that none of the allegations contained in certain paragraphs was true, were not in the form of a "negative pregnant" but were specific findings of fact.—*Huntoon v. Hurley*, 290 P.2d 14, 137 Cal.App.2d 33.—Trial 404(1).

Cal.App. 2 Dist. 1942. Trial court's finding "that all of the allegations" in a designated defense "are not true" did not fail to support judgment for plaintiff because it was in the nature of a "negative pregnant" finding, where finding as a whole was not uncertain but was to the effect that all the allegations of the paragraph were untrue, except certain specified facts.—*Ballagh v. Williams*, 122 P.2d 343, 50 Cal.App.2d 10.—Trial 404(1).

Cal.App. 2 Dist. 1938. A denial in answer that destroyed airplane was worth more than \$1,000 at time of accident was a "negative pregnant" and was an admission that the plane was worth the sum of \$1,000.—*United Air Services v. Sampson*, 86 P.2d 366, 30 Cal.App.2d 135.—Plead 126.

Cal.App. 2 Dist. 1935. Denial on information and belief of paragraph of complaint alleging assignment to plaintiff on certain day of note and trust deed sued on held not a "negative pregnant" and an admission of assignment on some other date, in view of statute permitting denials by reference to specific paragraphs or parts of complaint. West's Ann.Code Civ.Proc. § 437, as amended by St.1927, p. 529.—*Reinert v. Proud*, 47 P.2d 491, 8 Cal.App.2d 169.

Cal.App. 3 Dist. 1942. In personal injury action against theater corporation, denial in answer that corporation operated theater near which injury occurred was plain enough to put the fact in issue, as against claim that denial was a "negative pregnant".—*Wright v. Redwood Theatres*, 121 P.2d 756, 49 Cal.App.2d 403.—Plead 126.

Cal.App. 3 Dist. 1933. Answer denying in language of plaintiffs' allegations that realty conveyed to plaintiffs was not worth more than \$30,000 held "negative pregnant" which admitted realty was not worth more than \$30,000, justifying instruction to that effect.—*Holcomb v. Long Beach Inv. Co.*, 19 P.2d 31, 129 Cal.App. 285.—Plead 126.

Cal.App. 3 Dist. 1931. Denial in action for money had and received held to constitute "negative pregnant".—*Los Angeles Housing Corp. v. Crowley*, 295 P. 371, 111 Cal.App. 202.—Plead 126.

Cal.App. 4 Dist. 1943. In action against plaintiff's divorced husband for custody of parties' minor daughter, trial court's finding, that allegation of complaint that award of custody to plaintiff was to child's best interests was not true, did not constitute "negative pregnant" implying truth of such allegation and such finding was not inconsistent with finding of truth of allegation in defendant's cross-complaint that child's return to cross-complainant's control was for child's best interest.—*Jordan v. Jordan*, 135 P.2d 416, 58 Cal.App.2d 371.—Child C 659.

Cal.App. 4 Dist. 1943. A "negative pregnant", as in trial court's fact finding, is such form of negative expression as may imply or carry with it an affirmative.—*Jordan v. Jordan*, 135 P.2d 416, 58 Cal.App.2d 371.—Trial 395(2).

Cal.App. 4 Dist. 1942. Where complaint alleged that plaintiff was deprived of the use of his automobile for 21 days and that the reasonable value of the use was \$105, denial contained in the answer, which merely stated that defendants denied each of the allegations, and did not deny that reasonable value of use of automobile was a lesser sum, constituted a "negative pregnant" so far as value of the loss of use was concerned, and was an "admission" that reasonable value of the loss of use was any sum less than \$105, and authorized judgment for \$104 for loss of the automobile without proof of value of such loss.—*Armer v. Dorton*, 123 P.2d 94, 50 Cal. App.2d 413.—Damag 159(5); Plead 126.

Fla. 1939. A perjury information setting forth false testimony as nearly as possible in defendant's language, and alleging in same paragraph that defendant knew that designated matters as to which she falsely testified were not true, was not objectionable as grouping a number of different assignments in same paragraph, each of which was a "negative pregnant".—*Hall v. State*, 187 So. 392, 136 Fla. 644.—Perj 26(4).

Idaho 1911. A "negative pregnant" in a pleading is a negative implying also an affirmative, and is such a form of negative expression as may carry with it an affirmative.—*Nobach v. Scott*, 119 P. 295, 20 Idaho 558.

Ind. 1936. Remonstrance that highway proposed to be vacated was of public utility and asking that other viewers be appointed to examine such highway and determine whether highway was of public utility held sufficient as against contention that remonstrance constituted a "negative preg-

nant". *Burns' Ann.St.* § 36-209.—*Boss v. Deak*, 4 N.E.2d 180, 210 Ind. 449.—High 77(4).

Ind.App. 1951. Appellate Court was justified in inferring, from record which disclosed that, on search of residence of testator, no instrument purporting to be a will of testator other than propo-
nent's exhibit "A" was discovered, that such exhibit was discovered there, the statement being a "negative pregnant".—*In re Patton's Will*, 96 N.E.2d 353, 121 Ind.App. 256.—App & E 1010.1(8.1).

Kan. 1922. A "negative pregnant" involves and admits of an affirmative implication, or at least an implication of some kind favorable to the adverse party (citing *Words and Phrases*, vol. 5, p. 4739).—*Brown v. Union Pac. R. Co.*, 207 P. 196, 111 Kan. 338.—Plead 126.

Ky. 1950. In action for sale of decedent's land and division of proceeds among heirs, denial of allegations of intervening petition that decedent was owner of land described in petition except tract of which intervenors claimed they were the owners in possession at decedent's death, accompanied by affirmative allegation that decedent's heirs were owners of all land described in petition was not a "negative pregnant" admitting intervenors' ownership of land claimed by them.—*Floyd v. Blair*, 227 S.W.2d 993, 312 Ky. 418.—Plead 126.

Ky. 1942. Where defendants in city's suit to enforce paving assessment liens pleaded the five year statute of limitations and set forth in their answer the last date on which they had made payment on the paving assessment, the city's reply stating that it was not true that defendant had not made any payments since that date was a sufficient denial, and, in absence of any evidence concerning the assessments or payments, the plea of limitations was properly denied, as against contention that the reply was a "negative pregnant" which admitted the plea. *Ky.St.* § 2515.—*Jordan v. City of Olive Hill*, 162 S.W.2d 229, 290 Ky. 828.—Lim of Act 190.

Ky. 1938. Where numerous facts are alleged connectively, and the answer denies them in the same conjunctive form, a "negative pregnant" exists, and the denial admits the separate existence of each fact or goes only to certain facts and admits others.—*Ison v. Ison*, 115 S.W.2d 330, 272 Ky. 836.—Plead 126.

Ky. 1938. Where a fact is alleged with some qualifying or modifying language, and the denial is conjunctive, a "negative pregnant" exists, and only the qualification or modification is denied, while the fact itself is admitted.—*Ison v. Ison*, 115 S.W.2d 330, 272 Ky. 836.—Plead 126.

Ky. 1938. Where petition in equity seeking to recover realty allegedly held in trust by one defendant and conveyed to another defendant set forth conjunctively what the parties had done, and when and how, an answer denying all allegations of petition conjunctively and setting up affirmative defenses was demurrable as a "negative pregnant," and court should have permitted its reformation.—*Ison v. Ison*, 115 S.W.2d 330, 272 Ky. 836.—Plead 126, 225(1).

Ky. 1934. In action to quiet title, denial that plaintiff was owner or in possession of described land where description conflicted with description of smaller tract claimed by defendants held "negative pregnant" which admitted plaintiff's ownership and possession of all land except that claimed by defendants. Ky.St. § 11; Civ.Code Prac. § 126.—*Flinn v. Blakeman*, 71 S.W.2d 961, 254 Ky. 416.—Plead 126.

Mo.App. 1947. In action to recover rent under implied contract of rental, allegation of defendant, who denied that she was a tenant, to effect that there was an implied contract for free rent amounted to a "negative pregnant" which is not recognized under Missouri practice.—*Sherman Inv. Co. v. Sheehan*, 199 S.W.2d 922.—Plead 126.

Mo.App. 1941. In slander action, defendant's contention that his demurrer to evidence should have been sustained was in nature of a "negative pregnant" and, although permissible, yet, in considering demurrer, Court of Appeals would be guided by evidence most favorable to plaintiff, and accord to plaintiff's evidence absolute verity and disregard all of defendant's evidence except that which was consistent with and might aid plaintiff's case.—*Loneragan v. Love*, 150 S.W.2d 534, 235 Mo.App. 1066.—App & E 917(1).

Neb. 1907. A "negative pregnant" is such form of a negative expression as may carry with it an affirmative.—*Lemke v. Lemke*, 111 N.W. 138, 78 Neb. 525.

Nev. 1948. Where a plaintiff alleges that plaintiff and defendant intermarried on a specified date and at a specified time, and defendant merely denies the allegation generally without reaching specifically any fact alleged, the denial is objectionable as being a "negative pregnant".—*Peardon v. Peardon*, 201 P.2d 309, 65 Nev. 717.—Plead 126.

N.Y. 1909. A "negative pregnant" is a denial pregnant with an admission of a substantial fact which is apparently controverted, or one which, though in form of a traverse, really admits the important fact contained in the allegation. Order (1908) 112 N.Y.S. 1128, reversed.—*Electrical Accessories Co. v. Mittenenthal*, 87 N.E. 684, 194 N.Y. 473.—Plead 126.

N.Y.A.D. 3 Dept. 1921. In an action for goods sold and delivered where the complaint alleged that the seller notified the buyers that the prices fixed were subject to the prices prevailing at the time of shipment, and that at such time the prices had increased from \$227 to \$355, the buyers' answer, denying any sale of goods amounting to \$355, which further denied sale at the prices fixed for the various items, is sufficient, in view of the unusual circumstances, to raise an issue as to the prices, and not open to attack under Code Civ.Proc. § 500, declaring that the answer must contain a general or specific denial of each material allegation of the complaint controverted, on the theory that it is a "negative pregnant," which is a denial in form, but is in fact an admission, as where the denial in haec verba includes the time and place, which are usually immaterial; hence judgment for the seller on the

pleadings was improper.—*Hall & Lyon Furniture Co. v. Torrey*, 188 N.Y.S. 486, 196 A.D. 804.—Plead 345(1).

N.Y.Sup.App.Term 1905. Under Municipal Court Act, Laws 1902, p. 1538, § 150, providing that the answer must contain a denial of each material allegation of the complaint controverted, a complaint alleging that in the month of April, 1904, plaintiff did work, etc., for defendants, is not sufficiently denied by an answer denying that in the month of April, 1904, plaintiff did work, etc., for defendants, but failing to deny that he did so at any other time; it constituting a "negative pregnant".—*Levin & Meyer Contracting Co. v. Jackson*, 92 N.Y.S. 307, 46 Misc. 445.

Okla. 1942. Where plaintiff in action to recover money allegedly due from oil production, alleged that she owned a definite proportionate share of oil produced from certain premises, and purchased by defendant, and defendant admitted that such was the fact, but alleged that by reason of certain proceedings in which plaintiff was a party, there had arisen a question as to the extent of plaintiff's interest, and that before defendant could safely make payment it was entitled to have that interest definitely established, defendant's answer did not constitute a "negative pregnant" and there was presented an issue to be determined by evidence, and judgment for plaintiff on the pleadings was improperly rendered.—*Peppers Gasoline Co. v. Mitchell*, 122 P.2d 998, 190 Okla. 259, 1942 OK 39.—Plead 126, 345(1.3).

Okla.Terr. 1903. A denial that the defendants are indebted to plaintiff in the precise sum charged in the petition, and that the use and occupation of the premises is worth the sum mentioned in the petition, is a "negative pregnant," and is no denial at all; and where such a pleading is filed by way of an answer the allegations of the petition are treated as admitted.—*Jackson v. Green*, 74 P. 502, 13 Okla. 314, 1903 OK 78.

Or. 1923. A "negative pregnant" is a form of negative expression that implies or carries with it an affirmative, and, being an admission of the allegations intended to deny, it is insufficient to raise an issue.—*McIntosh Livestock Co. v. Buffington*, 217 P. 635, 108 Or. 358.

Tex.Civ.App. 1904. A finding by a jury that a sheriff had not neglected and failed to present and have approved his official bond as sheriff, and take the oath of office, within the time prescribed by law, amounts to a "negative pregnant," and should be treated as an admission of the implied fact.—*State v. Box*, 78 S.W. 982, 34 Tex.Civ.App. 435.

Wis. 1970. "Negative pregnant" occurs in responsive pleading where the denial is stated in very words employed in the complaint and negative pregnant is condemned because it is pregnant with alternative admissions to allegations of the complaint. W.S.A. 889.22.—*Prestin v. Baumgartner*, 177 N.W.2d 825, 47 Wis.2d 574.—Plead 126.

NEGATIVE RECIPROCAL EASEMENT

Ky. 1957. Property right which restrictive covenants give other landowners in any affected tract is known as a "negative reciprocal easement."—*Thompson v. Fayette County*, 302 S.W.2d 550.—*Covenants* 77.1.

NEGATIVE RELIEF

C.A.9 (Cal.) 1958. In action for judicial review of administrative order of bureau of land management denying applications for patents to mining claims in Los Angeles National Forest, applicant's prayer that the forest service official who had contested the applications should be enjoined from disturbing applicant's possession of the claims was a prayer for "negative relief" within power of court to grant, and was not a prayer for "mandatory affirmative relief" which it was asserted the court had no power to grant. Administrative Procedure Act, § 10(b, e), 5 U.S.C.A. § 1009(b, e).—*Adams v. Witmer*, 271 F.2d 29.—*Mines* 40.

NEGATIVE RESTRICTIVE EASEMENTS

W.Va. 1976. "Negative restrictive easements" are basically restrictive covenants which are equitably enforceable.—*Bennett v. Charles Corp.*, 226 S.E.2d 559, 159 W.Va. 705.—*Ease* 13.

NEGATIVE SALE

S.C.App. 1993. Automobile insurer's offer of underinsured motorist coverage which "rolled on" underinsured motorist coverage with mandatory liability coverage and gave insurer right to reject coverage and receive partial refund of premium was illegal "negative sale" in violation of statute requiring insurer to offer optional underinsured motorist coverage up to limits of insured liability coverage. Code 1976, § 38-77-160.—*American Sec. Ins. Co. v. Howard*, 431 S.E.2d 604, 315 S.C. 47.—*Insurance* 2775.

NEGATIVE SECONDARY EFFECTS DOCTRINE

N.D.Ala. 2001. "Negative secondary effects doctrine" operates as an exception to general rule that statutes discriminating among particular kinds of speech or expression on basis of content are inherently suspect and to be subjected to the strictest scrutiny; unlike regulations that prohibit certain forms of expression based upon either disagreement with the content or the effect of the expression upon the audience, a regulation aimed at negative secondary effects associated with adult entertainment establishments is unrelated to suppression of its erotic message. U.S.C.A. Const.Amend. 1.—*Ranch House, Inc. v. Amerson*, 146 F.Supp.2d 1180.—*Const Law* 90.4(3).

NEGATIVE SERVITUDE

La.App. 2 Cir. 1941. Persons who bought property in a subdivision under a restriction in deeds requiring houses to face certain streets acquired a "property right" or a "negative servitude", and so long as the restriction remained in effect, any one owning property in the subdivision had the right in

law to enforce its observance, but if the restriction was removed by common consent or abandoned by long acquiescence in nonobservance, the restriction and, with it, the property right vanished.—*Edwards v. Wiseman*, 3 So.2d 655, affirmed as amended 3 So.2d 661, 198 La. 382.—*Covenants* 72.1.

Md. 1895. The term "negative servitude" is used to designate a servitude in which the proprietor of the servient estate is barely restrained, but by which he is not obliged to suffer something to be done upon his property by another.—*Rowe v. Nally*, 32 A. 198, 81 Md. 367.

NEGATIVE TESTIMONY

C.A.4 (Va.) 1966. Where each of six witnesses who testified in action under Federal Employers' Liability Act that bell of diesel engine did not sound before brakeman was injured when struck by boxcar, was in proximity to scene of accident and had motive to listen for ringing of bell, their testimony was "positive testimony" and not merely "negative testimony," and therefore decisive weight was not required to be given to testimony of two witnesses that warning bell was sounded. Federal Employers' Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.—*Jones v. Chesapeake & O. Ry. Co.*, 371 F.2d 545.—*Evid* 586(1).

C.C.A.8 (Ark.) 1944. Under Arkansas law, testimony of witness in possession of his hearing faculties and so situated that he would have heard train crossing signals if they had been given, that he heard no such signals, was not "negative testimony", but "affirmative testimony" that statutory signals were not given, entitled to such weight as jury saw fit to give it. Pope's Dig.Ark. § 11135.—*Phillips v. Kurn*, 145 F.2d 908.—*Evid* 586(1), 586(3).

C.C.A.3 (Pa.) 1936. Testimony that witness was in position where he could have heard train bell rung or whistle blown, but that no bell was rung and no whistle was blown, constituted not "negative testimony" but "positive testimony" sufficient to support verdict that train failed to give due warning of its approach, resulting in collision with automobile at crossing.—*Delaware & Hudson Co v. Stanek*, 81 F.2d 396.—*R R* 348(4).

Ga. 1942. In administrator's action to recover land owned by intestate at time of his death, admission of "negative testimony" that if any division of intestate's realty had been made by heirs as claimed, the witnesses would have heard about it and that they never had, even if erroneous, did not require reversal.—*Hortman v. Vissage*, 19 S.E.2d 523, 193 Ga. 596.—*App & E* 1050.1(8.1).

Ga.App. 1958. "Negative testimony" is a sort of circumstantial evidence and negative testimony by person in a position to see or hear something to effect that he did not see or hear, may ordinarily be believed by a jury although there is positive testimony that such thing did not exist, but to apply the rule, consideration must also be given to the opportunities existing on the part of both sets of witnesses. Code, § 38-111.—*Allison v. Cobb County*, 103 S.E.2d 195, 97 Ga.App. 331.—*Evid* 586(1).

Ga.App. 1946. Testimony of witness that if a thing happened witness did not see it or know of it is "negative testimony" within positive and negative evidence statute. Code, § 38-111.—Progressive Life Ins. Co. v. Archer, 37 S.E.2d 713, 73 Ga.App. 639.—Trial 206.

Ga.App. 1946. In action on double indemnity clause of life policy, where a witness testified that she saw automobile driven by insured turn over twice, testimony of witness who was riding in automobile that he did not know how many times automobile turned over was "negative testimony" authorizing charge on positive and negative evidence. Code, § 38-111.—Progressive Life Ins. Co. v. Archer, 37 S.E.2d 713, 73 Ga.App. 639.—Trial 206.

Ga.App. 1938. Where a witness' testimony otherwise appears to be negative, his statement that the thing could not have happened without his seeing it would not change his "negative testimony" to "positive testimony."—Moore v. State, 195 S.E. 320, 57 Ga.App. 287.—Crim Law 551.

Ga.App. 1913. A witness' testimony in a criminal case, simply that he was present and did not see the transaction, is "negative testimony."—Heywood v. State, 77 S.E. 1130, 12 Ga.App. 643.—Crim Law 387.

Ga.App. 1908. Where the witness of the state testified that defendant drew his pistol and had it in his hand during the difficulty, and defendant's witnesses testified that they did not see him have any pistol, it was error to charge that if some witnesses were present and had opportunity to know the facts, and there was another class of witnesses who testified that they did not know, the law requires the jury to believe the positive testimony, and that "positive testimony" is that of witnesses who know the facts, and "negative testimony" is that where the witness "doesn't know the facts, or didn't see it."—Daniel v. State, 62 S.E. 539, 4 Ga.App. 843.

Ind.App. 1932. Where a witness testifies that he saw or heard a fact, that is "positive evidence"; but where another witness testifies that he was present, but did not see or hear what is supposed to have occurred, that is often regarded as "negative testimony," nevertheless testimony of a witness that he did not "see nor hear something which he would have seen or heard had it occurred has been regarded as "positive testimony."—Chicago, S.S. & S.B.R. Co. v. Pacheco, 181 N.E. 7, 94 Ind.App. 353.

Iowa 1949. Testimony of representatives of buyer when signing contract for purchase of printing press that contract did not contain an "escalator clause" was not "negative testimony" required to be given less weight than the testimony of the seller's representative claiming that the contract contained the "escalator clause."—Record & Tribune Co. v. Brandtjen & Kluge, Inc., 39 N.W.2d 288, 240 Iowa 1342.—Evid 586(1).

La.App.Orleans 1940. In customer's action for injuries sustained by falling on floor of store, wherein customer's witnesses testified that floor was slippery and that there was oil or grease on it, store

owner's witnesses' testimony was not "negative testimony" so as not to be entitled to as much weight as testimony of customer's witnesses merely because it stated that there was no oil or grease on the floor.—Greeves v. S. H. Kress & Co., 198 So. 171.—Evid 586(1).

La.App.Orleans 1939. In passenger's action for injuries alleged to have been sustained in alighting from motorbus, where passenger's witnesses stated that bus moved and witnesses for bus company stated that bus did not move, bus company's witnesses' testimony was not "negative testimony" merely because it denied that something happened, so as not to be entitled to as much weight as testimony of passenger's witnesses.—Franklin v. New Orleans Public Service, 187 So. 126.—Evid 586(1).

Mich. 1916. "Negative testimony" is testimony that a fact did not occur, founded on the witness' failure to hear or see a fact which he would supposedly have heard or seen had it occurred.—Cinadar v. Detroit, G.H. & M. Ry. Co., 159 N.W. 312, 193 Mich. 38.

N.J. 1956. Testimony is "negative testimony" if the witness states that he did not hear or did not see the phenomenon in question.—Honey v. Brown, 126 A.2d 354, 22 N.J. 433.—Evid 586(1).

Pa.Super. 1947. A denial, categorical, specific or otherwise, is not "negative testimony," but in substance is "positive testimony" affirming that opponent's testimony is false and that event to which he or his witnesses testified did not happen.—Bobst v. Bobst, 51 A.2d 414, 160 Pa.Super. 340, reversed 54 A.2d 898, 357 Pa. 441.—Evid 586(1).

Pa.Super. 1942. Testimony of motorist who was in position to see and hear, that after stopping at railroad crossing, he was watching and listening but saw and heard nothing was positive in quality and sufficiently definite to take the case out of the "negative testimony" rule applicable to railroad crossing accidents.—Taylor v. Reading Co., 27 A.2d 901, 149 Pa.Super. 171.—Evid 586(1).

Pa.Super. 1942. In action for destruction of motortruck in grade crossing collision, truck driver's testimony that, when four feet from tracks, he stopped, looked in both directions, and listened, and that there was no whistle blown or bell rung, was "positive testimony" sufficient to take question to jury, and court erred in granting judgment n. o. v. for railroad on ground that such testimony was "negative testimony" insufficient to carry question to jury because contradicted by positive evidence.—Moyer v. Reading Co., 24 A.2d 48, 147 Pa.Super. 178.—Judgm 199(3.18); Trial 139.1(19).

Pa.Super. 1941. Physicians' testimony that they could not see or did not find any causal connection between injury and tuberculosis which caused death was not "negative testimony", and hence was sufficient basis for disallowance of compensation. 77 P.S. § 834.—Yerko v. Clearfield Bituminous Coal Corp., 21 A.2d 97, 145 Pa.Super. 269.—Work Comp 1513.

Pa.Super. 1941. In actions against railroad for injuries to guests in truck which on dark, rainy night collided with freight train at city street crossing, the testimony of two witnesses, who were more than 200 feet from crossing and their attention not particularly directed thereto, that they heard no warning bell nor any noise of a moving train, was "negative testimony" and insufficient to raise jury question as to railroad employees' negligence when controverted by physical facts and positive testimony that train was moving and bell ringing.—*Venchik v. Pennsylvania R. Co.*, 18 A.2d 118, 143 Pa.Super. 438.—Trial 139.1(19).

R.I. 1941. As respects weight to be given thereto, where plaintiffs sought to recover for property destroyed by fire which allegedly spread from fire at city dump, and each fireman testifying for city on direct examination was asked in effect whether he observed any fire between burning building and the city dump, and each answered "No", it was not incumbent on plaintiff, to establish negative character of testimony, to show by cross-examination that firemen did not look for fire between dump and the burning building, since form of question propounded to firemen on direct examination established their testimony as "negative testimony".—*Enterprise Garnetting Co. v. Forcier*, 23 A.2d 761, 67 R.I. 336.—Evid 586(3).

R.I. 1941. Where plaintiffs sought to recover for property destroyed by fire which allegedly spread from a fire in city dump and each fireman testifying for the city on direct examination in response to question whether he saw any fire between burning building and city dump answered "No," negative answer was of no probative value without establishing that firemen actually looked for fire between the burning building and dump, and even then testimony would not be transformed into "positive testimony" but would be merely "negative testimony" subject to infirmities of such evidence if opposed by any quantum of positive testimony.—*Enterprise Garnetting Co. v. Forcier*, 23 A.2d 761, 67 R.I. 336.—Evid 586(3).

Tenn. 1950. In action for injury to plaintiff resulting from fall into hole created in aisle of defendants' moving picture theater by displacement of iron grating over hot air furnace outlet, testimony of plaintiff's sister that she did not remember whether lights in aisle were not burning, was "negative testimony," did not contradict testimony, of plaintiff and her brother, and created issue for jury.—*Smith v. Sloan*, 227 S.W.2d 2, 189 Tenn. 368.—Theaters 6(32); Trial 139.1(19).

Tenn.Crim.App. 1981. "Negative testimony" is that given by a witness who, having been present, testifies, not positively that an alleged fact or event did not exist or occur, but merely that he did not see or hear or otherwise observe its existence or occurrence; if witness, having been present, testifies that he was attentive but did not see or hear or otherwise observe alleged fact or event, his testimony while commonly termed a "negative," is not of a purely negative character, and where witness describes fact or event observed by him and an opposing witness observed and describes same fact or

event differently, testimony of both is equally positive.—*State v. Smith*, 626 S.W.2d 283.—Crim Law 387.

Va. 1942. Where witness testified that he was familiar with street intersection, that it was dangerous when traffic light was not on, and that witness looked up a street for the particular purpose and saw no headlights approaching, the testimony that witness saw no headlights was "positive" and not "negative testimony".—*Staples v. Spence*, 19 S.E.2d 69, 179 Va. 359, 140 A.L.R. 527.—Evid 586(1).

Wis. 1920. In slander action, testimony of witness who testified positively that defendant did not speak the words charged did not constitute negative testimony; "negative testimony" relating only to the testimony of a witness who had an opportunity to see an occurrence testified, by some other witness, to have taken place, and which he did not see, or of one who had an opportunity to hear or know of an occurrence, testified to positively by some other witness, to have happened that he did not hear it or recall it.—*Suick v. Krom*, 177 N.W. 20, 171 Wis. 254.—Evid 586(1).

Wis. 1917. Where persons working near a railroad track were listening for trains and train signals and were in a position where they could have heard the bell or whistle notwithstanding other noises in the vicinity, their testimony that no bell was rung was not "negative testimony" so as to be outweighed as a matter of law by testimony that the bell was rung, and it made a question for the jury as to whether the bell was rung, and supported a finding that it was not.—*Jurkovic v. Chicago, M. & St. P.R. Co.*, 164 N.W. 993, 166 Wis. 266.

NEGATIVE TIES

C.A.1 (Mass.) 1994. In addition to outlawing "positive" ties likely to restrain competition, Sherman Act provision prohibiting contracts in restraint of trade also forbids "negative ties," arrangements conditioning sale of one product on agreement not to purchase second product from competing suppliers. Sherman Act, § 1, as amended, 15 U.S.C.A. § 1.—*Data General Corp. v. Grumman Systems Support Corp.*, 36 F.3d 1147.—Monop 17.5(2).

NEGATIVE VALUE CLAIMS

S.D.N.Y. 2002. Most compelling rationale for finding superiority in a class action is the existence of a negative value suit; "negative value claims" are claims in which the costs of enforcement in an individual action would exceed the expected individual recovery. Fed.Rules Civ.Proc.Rule 23(b)(3), 28 U.S.C.A.—In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, 209 F.R.D. 323.—Fed Civ Proc 161.2.

NEGATIVE VALUE SUIT

N.D.Miss. 2000. Most compelling rationale for finding class action a superior means of adjudicating claims is the existence of a "negative value suit," in which the stakes to each member are too slight to repay the cost of the suit. Fed.Rules Civ.Proc.Rule 23(b)(3), 28 U.S.C.A.—*Walton v.*

Franklin Collection Agency, Inc., 190 F.R.D. 404.—Fed Civ Proc 161.2.

S.D.Tex. 1999. Fact that plaintiff in Lanham Act false advertising action sought more than \$100,000, and putative class members' claims would also be substantial, weighed against finding that class action was superior method for disposing of members' claims; action was not "negative value suit." Fed.Rules Civ.Proc.Rule 23(b)(3), 28 U.S.C.A.—Ford v. Nylcare Health Plans of Gulf Coast, Inc., 190 F.R.D. 422, affirmed 301 F.3d 329, rehearing and rehearing denied 48 Fed.Appx. 482.—Fed Civ Proc 181.

S.D.Tex. 1999. "Negative value suit," weighing in favor of finding that class action is superior method of resolving claims, is one in which stakes to each member of proposed class are too slight to repay cost of suit. Fed.Rules Civ.Proc.Rule 23(b)(3), 28 U.S.C.A.—Ford v. Nylcare Health Plans of Gulf Coast, Inc., 190 F.R.D. 422, affirmed 301 F.3d 329, rehearing and rehearing denied 48 Fed.Appx. 482.—Fed Civ Proc 161.2.

NEGLECT

U.S.Wash. 1904. The word "neglect," as used in Rev.St. Idaho, § 4100, providing that, when a person's death is caused by the wrongful act or neglect of another, his heirs and personal representatives may maintain an action for damages against the person causing the death, stands in the same category with wrongful act, and implies some omission of duty. The death of a free passenger on a railway train, not due to the omission on the part of the railway company of any duty owing to deceased, cannot be considered as caused by the neglect of the railroad company, and hence the heirs or personal representatives of the deceased cannot maintain an action under the section.—Northern Pac. Ry. Co. v. Adams, 24 S.Ct. 408, 192 U.S. 440, 48 L.Ed. 513.

C.A.7 (Ill.) 1993. Delay by reinsurer in naming arbitrator due to secretarial error in typing deadline for naming arbitrator on internal control sheet constituted "neglect," within meaning of arbitration provision in reinsurance agreement, entitling insurer to name arbitrator on reinsurer's behalf; arbitration provision used term "neglect" without limitation, embracing excusable as well as culpable omissions.—Universal Reinsurance Corp. v. Allstate Ins. Co., 16 F.3d 125, rehearing and suggestion for rehearing denied.—Insurance 3626.

C.A.5 (La.) 1983. Word "neglect" in Louisiana statute providing that owner of a building is answerable for damage occasioned by its ruin when damage is caused by neglect to repair it or when it is result of vice in original construction permits no inference of owner negligence or culpability and word is a synonym for "failure" permitting imposition of strict liability or liability without fault. LSA—C.C. art. 2322.—Hyde v. Chevron U.S.A., Inc., 697 F.2d 614.—Neglig 1101.

C.A.5 (La.) 1956. Unseaworthiness, per se, does not constitute "neglect," within fire statute, and to deny exemption, negligence must be that of owner

himself or his managing officers, and negligence of a ship's employee is not imputable to owner under fire statute. 46 U.S.C.A. § 182.—Hartford Acc. & Indem. Co. v. Gulf Refining Co., 230 F.2d 346, certiorari denied Gulf Refining Co. v. Black Warrior Towing Co, 77 S.Ct. 49, 352 U.S. 832, 1 L.Ed.2d 52.—Ship 138.

C.A.4 (Md.) 1992. Exclusion from homeowners policy for loss due to "neglect" implies at least a cognitive capacity of recognizing alternative courses of conduct, relative risks of choice between them, and the volitional capacity to make conscious choice between them.—Erie Ins. Exchange v. Stark, 962 F.2d 349.—Insurance 2166(2).

C.A.6 (Mich.) 1996. For purposes of Rule of Appellate Procedure providing that time to appeal in criminal or civil cases may be extended for excusable neglect, "neglect" is some jurisdictional act that was left undone or unattended to especially through carelessness, and thus encompasses both simple faultless omissions to act and omissions caused by carelessness. F.R.A.P.Rule 4, 28 U.S.C.A.—U.S. v. Thompson, 82 F.3d 700.—Crim Law 1069(6); Fed Cts 653.

C.A.2 (N.Y.) 1982. "Neglect," as used in fire statute, which exonerates shipowner from liability for fire damage to cargo unless fire was caused by "design or neglect" of owner, means negligence, not breach of nondelegable duty. 46 U.S.C.A. § 182.—In re Ta Chi Nav: Corp., S.A., 677 F.2d 225, on remand Complaint of Ta Chi Navigation (Panama) Corp., S.A., 574 F.Supp. 418.—Ship 136.

C.A.2 (N.Y.) 1958. Words "neglect" and "default" in New Jersey wrongful death statute, providing for action for damages for death of person caused by wrongful act, neglect, or default, cover breach of warranty of seaworthiness. N.J.S.A. 2A:31-1.—Halecki v. United New York & New Jersey S.H.P. Ass'n, 251 F.2d 708, certiorari granted United N Y and N J Sandy Hook Pilots Ass'n v. Halecki, 78 S.Ct. 1149, 357 U.S. 903, 2 L.Ed.2d 1154, vacated and remanded 79 S.Ct. 517, 358 U.S. 613, 3 L.Ed.2d 541, concurring opinion The Tungus v. Skovgaard, 79 S.Ct. 523, 358 U.S. 588, 3 L.Ed.2d 524.—Death 14(1).

C.A.1 (Puerto Rico) 1992. Attorney's "neglect" which triggered dismissal of client's action was not of "excusable" variety recognized by rule pertaining to motions for relief from judgment; attorney failed to attend status conference which he had asked court to reschedule, and he made no effort to discover or remedy his delinquency. Fed.Rules Civ.Proc.Rule 60(b)(1), 28 U.S.C.A.—Vargas v. Gonzalez, 975 F.2d 916.—Fed Civ Proc 2656.

C.A.10 (Wyo.) 1993. Term "neglect," as used in Bankruptcy Rule permitting an extension of time for performing act if litigant's delay is result of its excusable neglect, encompasses both simple, faultless omissions to act and omissions caused by carelessness. Fed.Rules Bankr.Proc.Rule 9006(b), 11 U.S.C.A.—Jones v. Arross, 9 F.3d 79.—Bankr 2132.

C.C.A.2 (N.Y.) 1943. "Neglect," within statute exempting ship owner from liability to cargo owner

for damage to cargo through fire, unless fire is caused by design or neglect of ship owner, means personal, and not imputed, negligence. 46 U.S.C.A. § 182.—*Consumers Import Co. v. Kawasaki Kisen Kaisha*, 133 F.2d 781, certiorari granted 63 S.Ct. 1157, 319 U.S. 734, 87 L.Ed. 1695, motion denied 63 S.Ct. 1315, affirmed 64 S.Ct. 15, 320 U.S. 249, 88 L.Ed. 30.—*Ship* 138.

C.C.A.2 (N.Y.) 1941. Failure of marine superintendent employed by corporate shipowner to become aware of long-continued violation of statute requiring division of sailors into equal watches was itself gross “neglect” of his duties, as affecting coverage by indemnity marine policy covering damage sustained without actual fault, privity, act or “neglect” of insured or its managing officers. 46 U.S.C.A. § 183.—*New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L.Ed. 1537.—*Insurance* 2406(3).

C.C.A.2 (N.Y.) 1941. Failure to exercise that supervision over subordinates which someone in authority for corporate shipowner should have shown is “neglect” by shipowner, precluding recovery on indemnity marine policy covering liability sustained without actual fault, privity, act or neglect of shipowner or its managing officers. 46 U.S.C.A. § 183.—*New York & Cuba Mail S. S. Co. v. Continental Ins. Co. of City of New York*, 117 F.2d 404, certiorari denied 61 S.Ct. 1103, 313 U.S. 580, 85 L.Ed. 1537.—*Insurance* 2368.

C.C.A.2 (N.Y.) 1935. “Neglect,” under statute exempting owner of vessel from liability for fire unless fire is caused by the design or neglect of such owner, means the neglect which caused the fire. 46 U.S.C.A. § 182.—*The Ida*, 75 F.2d 278.—*Ship* 138.

S.D.Ga. 1978. Word “neglect,” within statute providing that no owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise that is shipped, taken in, or put on board vessel by means of any fire happening to or on board vessel unless fire is caused by design or neglect of owner, contemplates negligence of managing officers and agents in case of a corporate shipowner as distinguished from master or members of crew or subordinate employees. 46 U.S.C.A. § 182.—*Hanson & Orth, Inc. v. M/V Jalatarang*, 450 F.Supp. 528.—*Ship* 138.

C.D.Ill. 1995. “Neglect,” such as creditor must demonstrate as prerequisite to filing untimely proof of claim under “excusable neglect” standard, can be established by showing that creditor’s failure to file timely proof of claim was result either of circumstances beyond creditor’s reasonable control or of creditor’s inadvertence, mistake or carelessness. Fed.Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—*Agribank v. Green*, 188 B.R. 982.—*Bankr* 2900(1).

C.D.Ill. 1995. Creditor’s deliberate decision not to file proof of claim prior to expiration of claims bar date, on ground that it was not in position to definitively state exact amount of its claim until

after foreclosure sale had closed, was not result of circumstances beyond creditor’s control or of creditor’s mere inadvertence, mistake, or carelessness, and could not be regarded as “neglect,” of kind which creditor would have to demonstrate in order to file untimely proof of claim. Fed.Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—*Agribank v. Green*, 188 B.R. 982.—*Bankr* 2900(1).

N.D.Ill. 1997. Excusable “neglect” requirement for enlargement of time to act includes negligent failure to meet deadline. Fed.Rules Civ.Proc.Rule 6(b)(2), 28 U.S.C.A.—*In re Brand Name Prescription Drugs Antitrust Litigation*, 171 F.R.D. 213.—*Fed Civ Proc* 923.

E.D.Mich. 2002. “Neglect,” such as party must demonstrate to be entitled to after-the-fact extension of deadline for filing bankruptcy appeal, encompasses both simple, faultless omissions to act and omissions caused by carelessness. Fed.Rules Bankr.Proc.Rules 8002(a), 9006(b)(1), 11 U.S.C.A.—*In re Kriegish*, 280 B.R. 132.—*Bankr* 3775.

D.Neb. 1942. As respects right to set aside default judgment on ground of “inadvertence” or “neglect,” the quoted words are not precisely identical in their connotations, but they are often classified as synonymous and are frequently employed interchangeably in applying the tests prescribed by federal rule of civil procedure, and, although the word “excusable” does not precede the word “inadvertence” in the rule, the pertinent decisions deny relief on the ground of inadvertence unless it is actually excusable. Fed.Rules Civ.Proc. rule 60(b), 28 U.S.C.A.—*Ledwith v. Storkan*, 2 F.R.D. 539.—*Fed Civ Proc* 2446.

D.Neb. 1942. Mere neglect or inadvertence resulting in default will not alone justify the vacation of the ensuing judgment, but the “neglect” or “inadvertence” must be excusable and real, and practical grounds for excuse must be factually shown in support of motion to set aside judgment. Fed.Rules Civ.Proc. rule 60(b), 28 U.S.C.A.—*Ledwith v. Storkan*, 2 F.R.D. 539.—*Fed Civ Proc* 2448.

D.Or. 1960. Within fire statute, which generally exempts a vessel owner from liability for fire damage unless fire is caused by owner’s design or neglect, “design” contemplates a causative act or omission, done or suffered wilfully or knowingly by the owner, and “neglect” refers to owner’s personal negligence, or, in case of a corporate owner, negligence of its managing officers and agents as distinguished from that of the master or subordinates. 46 U.S.C.A. § 182.—*Hershey Chocolate Corp. v. The Robert Luckenbach*, 184 F.Supp. 134, affirmed *Albina Engine & Mach. Works, Inc. v. Hershey Chocolate Corp.*, 295 F.2d 619.—*Ship* 138.

1st Cir.BAP (Mass.) 2002. “Neglect,” of kind required to permit late filing of proof of claim on “excusable neglect” standard, cannot be equated with conscious disregard of claims bar date. Fed. Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—*In re Mahoney Hawkes*, 272 B.R. 19.—*Bankr* 2900(1).

6th Cir.BAP (Ohio) 2000. Failure on part of debtor's attorney to file timely notice of appeal, or timely motion for extension of time to appeal, constituted "neglect," which, if excusable, would permit court to grant out-of-time extension of appeals deadline. Fed.Rules Bankr.Proc.Rule 8002(c)(2), 11 U.S.C.A.—In re Schultz, 254 B.R. 149, 2000 Fed.App. 10P.—Bankr 3775.

Bkrtcy.E.D.Ark. 1993. Term "neglect," as used in Bankruptcy Rule authorizing court to accept untimely filings based on filer's excusable neglect, encompasses both simple faultless omissions to act and, more commonly, omissions caused by carelessness. Fed.Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—In re Waggoner, 157 B.R. 433.—Bankr 2132.

Bkrtcy.D.Conn. 2001. Taxing authority which, with full knowledge of debtor-taxpayer's Chapter 11 filing and of bar date for filing proofs of claim, had consciously elected not to file any proof of claim in reliance on debtor's tax history and in erroneous belief that no taxes would be due, was not entitled to extension of claims bar date upon "excusable neglect" theory; taxing authority's conscious decision not to file any claim was antithesis of "neglect." Fed.Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—In re SC Corp., 265 B.R. 660.—Bankr 2900(1).

Bkrtcy.M.D.Fla. 1998. Creditor's failure to initially respond to bankruptcy court's order constituted "neglect," for purposes of rule governing relief from final order, where failure to respond was due to failure of creditor and creditor's counsel to properly review calculations of amount of debt made by Chapter 13 debtor's counsel and total sum contained in court's order. Fed.Rules Bankr.Proc. Rule 9024, 11 U.S.C.A.; Fed.Rules Civ.Proc.Rule 60(b)(1), 28 U.S.C.A.—In re Norris, 228 B.R. 27.—Bankr 2164.1.

Bkrtcy.N.D.Ga. 1993. Debtor was not guilty of any mere "neglect," yet alone any "excusable neglect," in failing to produce financial records called for by bankruptcy court's order in nondischargeability proceeding, so that debtor was not entitled to relief from bankruptcy court order denying him a discharge based on his failure to maintain adequate financial records, given evidence that debtor had intentionally chosen not to produce records in belief that the number of records requested was excessive and unreasonable. Bankr.Code, 11 U.S.C.A. § 727(a)(3); Fed.Rules Civ.Proc.Rule 60(b)(1), 28 U.S.C.A.—In re Bhandari, 161 B.R. 315.—Bankr 3318.1; Fed Civ Proc 2656.

Bkrtcy.D.Idaho 1993. For purposes of allowing late filing if failure to comply with earlier deadline was result of excusable neglect, notion of "neglect" is flexible, elastic concept encompassing broad variety of potential conduct. Fed.Rules Bankr.Proc. Rule 9006(b)(1), 11 U.S.C.A.—In re Earth Rock, Inc., 153 B.R. 61.—Bankr 2132.

Bkrtcy.N.D.Ill. 2002. Even assuming that court would have approved timely application for employment of professional crisis manager in liquidating Chapter 11 case, debtor's belated application for

nunc pro tunc approval of crisis manager's employment to allow crisis manager to be compensated for services that it provided to estate had to be denied; debtor's six-month delay in filing application was not result of any "neglect" on its part, but of conscious decision to withdraw prior application when it met with extensive resistance by creditors' committee and other parties in interest. Bankr. Code, 11 U.S.C.A. § 327; Fed.Rules Bankr.Proc. Rule 2014, 11 U.S.C.A.—In re Anicom, Inc., 273 B.R. 756.—Bankr 3157.

Bkrtcy.N.D.Ill. 2002. "Neglect" in filing application for employment of professional, of kind which, if "excusable," will allow employment to be approved nunc pro tunc, is not limited only to situations in which late filing was caused by circumstances beyond applicant's control, but also includes acts of carelessness. Bankr.Code, 11 U.S.C.A. § 327; Fed. Rules Bankr.Proc.Rule 2014, 11 U.S.C.A.—In re Anicom, Inc., 273 B.R. 756.—Bankr 3157, 3173.

Bkrtcy.N.D.Ill. 2002. Though there may be instances in which delay in filing application for approval of professional's employment may result from deliberate action and nonetheless constitute "neglect," conscious and deliberate action rarely constitutes "excusable neglect," of kind required for retroactive approval of employment nunc pro tunc. Bankr.Code, 11 U.S.C.A. § 327; Fed.Rules Bankr. Proc.Rule 2014, 11 U.S.C.A.—In re Anicom, Inc., 273 B.R. 756.—Bankr 3157, 3173.

Bkrtcy.N.D.Ill. 2000. Pursuant to the *Pioneer* test for determining "excusable neglect" under the bankruptcy rule governing enlargement of time, movant first must show that its actions constituted "neglect," either by establishing (1) circumstances beyond movant's control or (2) movant's inadvertence, mistake, or carelessness, and, if neglect is shown, then movant must prove that the neglect was "excusable," which entails a balancing test which includes review of (1) danger of prejudice to debtor, (2) length of the delay and its potential impact on judicial proceedings, (3) reason for the delay, including whether it was within movant's reasonable control, and (4) whether movant acted in good faith. Fed.Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—In re O'Shaughnessy, 252 B.R. 722.—Bankr 2132.

Bkrtcy.N.D.Ill. 1996. For purposes of rule permitting late claims to be deemed timely upon showing of excusable neglect, "neglect" is present when tardiness in filing proof of claim was due to circumstances outside of claimant's control. Fed.Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—In re S.N.A. Nut Co., 198 B.R. 541.—Bankr 2900(2).

Bkrtcy.N.D.Ill. 1994. Failure of creditor's attorneys to timely file proof of claim was result of "neglect," as required for extension of claim bar date due to excusable neglect, where attorneys inadvertently forgot to follow creditor's instructions and file proof of claim. Fed.Rules Bankr.Proc. Rules 3003(c)(3), 9006(b)(1), 11 U.S.C.A.—In re Dartmoor Homes, Inc., 175 B.R. 659.—Bankr 2900(1).

Bkrty.N.D.Ill. 1994. Defendants' failure to file any pretrial statements in adversary proceeding brought by Chapter 7 trustee for defendants' alleged conversion of debtor's patents was not result of "excusable neglect," such as might entitle defendants to relief from default judgment entered against them, where omission resulted from apparent delay tactic employed by defendants in repeatedly substituting attorneys and in sending attorney to pretrial conference who was totally unfamiliar with dispute before court; defendant's actions appeared to be carefully considered and intentional, rather than result of any "neglect." Fed.Rules Civ.Proc.Rule 60(b), 28 U.S.C.A.—In re Controlled Release Technologies, Inc., 163 B.R. 519.—Bankr 2165.

Bkrty.E.D.Mich. 2000. Under the bankruptcy rule governing enlargement of time, "neglect" encompasses both simple, faultless omissions to act, and omissions caused by carelessness. Fed.Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—In re Anderson, 253 B.R. 14.—Bankr 2132.

Bkrty.W.D.Mo. 1993. "Neglect," for purposes of excusable neglect standard for determining whether to allow extension of time for filing proofs of claim, encompasses some amount of negligence by definition. Fed.Rules Bankr.Proc.Rule 9006(b)(1), (b)(1)(1, 2), 11 U.S.C.A.—In re Broadmoor Country Club & Apt., 158 B.R. 146.—Bankr 2900(1).

Bkrty.D.Neb. 1995. Under excusable neglect standard for filing late proof of claim, broad definition of "neglect" includes instances where creditor filed late proof of claim due to carelessness or mistake. Fed.Rules Bankr.Proc.Rule 3003(c)(1), 9006(b)(1), 11 U.S.C.A.—Matter of Papp Intern., Inc., 189 B.R. 939.—Bankr 2900(1).

Bkrty.D.N.J. 1996. "Neglect," of kind which may permit filing of untimely proof of claim under "excusable neglect" standard, includes both simple, faultless omissions to act and omissions caused by carelessness. Fed.Rules Bankr.Proc.Rule 9006(b), 11 U.S.C.A.—Matter of LAN Associates XIV, L.P., 193 B.R. 730.—Bankr 2900(1).

Bkrty.D.N.J. 1996. Unsecured creditor's conscious decision not to file proof of claim prior to expiration of claims bar date, on ground that debtor's Chapter 11 plan did not contemplate that any distribution would be made to unsecured creditors and that filing of proof of claim appeared to be futile act, could not properly be characterized as "neglect," of kind which might permit bankruptcy court to consider creditor's out-of-time proof of claim under "excusable neglect" standard. Fed. Rules Bankr.Proc.Rule 9006(b), 11 U.S.C.A.—Matter of LAN Associates XIV, L.P., 193 B.R. 730.—Bankr 2900(1).

Bkrty.D.N.J. 1994. Creditors' failure to file timely notice of appeal or to request extension of time to file notice was "neglect," within meaning of "excusable neglect" standard of United States Supreme Court *Pioneer* decision for determining whether to extend time for filing notice of appeal. Fed.Rules Bankr.Proc.Rule 8002(a, c), 11

U.S.C.A.—In re Investors & Lenders, Ltd., 169 B.R. 546.—Bankr 3775.

Bkrty.S.D.N.Y. 2000. Term "neglect," as used in Federal Rule of Civil Procedure authorizing court to relieve party from effects of adverse final judgment upon showing of excusable neglect, encompasses inadvertence, carelessness, and mistake, and is not limited strictly to omissions caused by circumstances beyond movant's control. Fed.Rules Civ.Proc.Rule 60(b)(1), 28 U.S.C.A.—In re Morris, 252 B.R. 41.—Fed Civ Proc 2656.

Bkrty.S.D.N.Y. 1994. Term "neglect," as used in Bankruptcy Rule authorizing court to enlarge time within which party is required to act based on showing of "excusable neglect," encompasses not only circumstances beyond party's control, but simple, faultless omissions to act and omissions caused by carelessness. Fed.Rules Bankr.Proc.Rule 9006(b)(1), 11 U.S.C.A.—In re Hills Stores Co., 167 B.R. 348.—Bankr 2132.

Bkrty.W.D.N.Y. 2000. If someone simply chooses to "flout" a deadline, that is not "neglect" within meaning of rule authorizing bankruptcy court to accept late filings where failure to act is result of excusable neglect. Fed.Rules Bankr.Proc. Rule 9006(b)(1), 11 U.S.C.A.—In re D.A. Elia Const. Corp., 246 B.R. 164.—Bankr 2132.

Bkrty.N.D.Ohio 1994. Creditors' failure to file timely notice of appeal from bankruptcy court's order enforcing settlement agreement between Chapter 11 debtor and creditors represented "neglect," where neither creditors nor their counsel provided explanation as to why they could not have filed motion within ten-day deadline and creditors' counsel gave no explanation for his failure to file notice of appeal within ten days after he was unable to contact his client. Fed.Rules Bankr.Proc.Rule 8002(a, c), 11 U.S.C.A.—In re Rhoads Industries, Inc., 163 B.R. 299.—Bankr 3775.

Bkrty.E.D.Tenn. 1994. Failure to file notice of appeal within ten days of bankruptcy court's order denying proof of claim for fee for finding purchaser constituted "neglect," where claimant's counsel, and thus, claimant, had actual notice of order the day after the order was entered since order was received by counsel on that day. Fed.Rules Bankr. Proc.Rule 8002(c), 11 U.S.C.A.—In re Nickels Performance Systems, Inc., 169 B.R. 647.—Bankr 3775.

Ala. 1992. Under statute limiting liability of municipalities to injuries suffered through neglect, carelessness or unskillfulness, city was immune from liability to property developers claiming civil conspiracy and intentional interference with business relationship in connection with city's refusal to approve bond issue that would have assisted developers in financing development of their property; terms "neglect," "carelessness," and "unskillfulness," would not encompass asserted claims predicated on purposeful scheme to damage developers. Code 1975, § 11-47-190.—*Scott v. City of Mountain Brook*, 602 So.2d 893.—Mun Corp 723.

Ala. 1909. A sheriff, who, notwithstanding public feeling against a negro charged with murder,

failed to order the jail doors closed, or to take any precaution to prevent a lynching, being under Code 1907, §§ 132, 7191, the legal custodian of the jail chargeable with the duty of excluding intruders was subject to impeachment under Const.1901, § 138, providing that, when any prisoner is taken from jail and killed owing to the neglect of the sheriff, the sheriff may be impeached, for "neglect," as applied to a public officer, means a failure on his part to perform some of the duties of his office.—*State v. Cazalas*, 50 So. 296, 162 Ala. 210, 19 Am. Ann. Cas. 886.

Ariz. 1988. For purpose of disciplinary rule stating that lawyer shall not neglect legal matter entrusted to him, "neglect" cannot be limited to total abandonment of legal matter, but must also include failure to act with minimal efficiency. 17A A.R.S. Sup.Ct. Rules, Rule 29(a), Code of Prof. Resp., DR 6-101(A)(3).—*Matter of Pappas*, 768 P.2d 1161, 159 Ariz. 516.—Atty & C 44(1).

Ariz.App. Div. 2 1977. The expression "neglect" has no fixed meaning, but varies as context of circumstances changes; generally, expression "neglect" is defined as disregard of duty owing to indifference or willfulness.—*Matter of Appeal in Pima County, Adoption of B-6355 and H-533*, 575 P.2d 326, 118 Ariz. 127, vacated 575 P.2d 310, 118 Ariz. 111, certiorari denied *Clark v. Curran*, 99 S.Ct. 149, 439 U.S. 848, 58 L.Ed.2d 150.—*Infants* 156.

Ariz.App. Div. 2 1975. Expression "neglect" used with respect to parent-child relationship, has no fixed meaning; its meaning varies as context of circumstances changes. A.R.S. § 8-531[9].—*Matter of Appeal in Pima County, Juvenile Action No. S-111*, 543 P.2d 809, 25 Ariz.App. 380, review denied In *Matter of Appeal in Pima County, Juvenile Action No. S-111*, 550 P.2d 625, 113 Ariz. 247.—*Infants* 156.

Ariz.App. Div. 2 1972. "Neglect" with respect to child neglect is not a term of fixed meaning and its meaning varies as the context of circumstances changes. A.R.S. § 8-201, subsec. 10, par. b.—In re *Pima County Juvenile Action No. J-31853*, 501 P.2d 395, 18 Ariz.App. 219.—*Infants* 156.

Ark. 1934. Statute requiring commitment of father of bastard child to jail if he "refuses" or "neglects" to enter into bond with security does not authorize commitment, where father is unable to furnish the bond. *Crawford & Moses' Dig.* § 778. Word "refuse" implies willful disobedience, and "neglect" to do a thing implies negligence on part of the person; "neglect" being defined as an omission of proper attention, avoidance or disregard of duty, from heedlessness, indifference, or willfulness; negligence.—*Hemby v. State*, 67 S.W.2d 182, 188 Ark. 586.

Ark.App. 2002. Evidence established "neglect" of seven-year-old child, as basis for adjudication of child as dependent-neglected juvenile; mother sent child to take a bath in home of child's paternal grandmother, without supervising the child and without examining the bathroom to determine the temperature of the hot water and whether the

plumbing functioned properly, and the child suffered second-degree burns from hot water. A.C.A. § 9-27-303(33)(G).—*Hopkins v. Arkansas Dept. of Human Services*, 83 S.W.3d 418, 79 Ark.App. 1.—*Infants* 156.

Cal. 1890. "Neglect," as used in Pol.Code, § 996, providing that an office becomes vacant upon the refusal or neglect of one who is elected or appointed to an office to file his official oath or bond within the time prescribed, imports the omission or disregard of some duty. A person cannot disregard the duty to qualify connected with his appointment to an office until he receives information of his appointment. The power to neglect a duty must necessarily be based on a knowledge of the existence of the duty.—*People ex rel. Finigan v. Perkins*, 26 P. 245, 85 Cal. 509.

Cal. 1858. "Neglect," in order to constitute ground for a divorce, within the meaning of a statute authorizing the granting of divorces on that ground, must be such neglect as leaves the wife destitute, but for the charity of others. If the common necessities of life are provided by the earnings of either husband or wife, there is no such willful neglect as is contemplated by the statute.—*Washburn v. Washburn*, 9 Cal. 475.

Cal.App. 1 Dist. 1940. The word "neglect" within statute providing that every successive owner of property who neglects to abate a continuing nuisance created by a former owner is liable therefor in same manner as one who first created it is not synonymous with "omit", since "neglect" imports "intent" which presupposes knowledge, and creator of a nuisance is presumed to have knowledge of his own acts, but there is no presumption that successor to title to realty has knowledge or acts of his predecessor in interest. Civ.Code, § 3483.—*Reinhard v. Lawrence Warehouse Co.*, 107 P.2d 501, 41 Cal.App.2d 741.—*Nuis* 10.

Cal.App. 2 Dist. 1917. Under Pol.Code, § 907, providing that, "whenever a different time is not prescribed by law, the oath of office must be taken, subscribed, and filed within thirty days after the officer has notice of his election or appointment," and section 947, providing that "every official bond must be filed in the proper office within the time prescribed for filing the oath," and section 996, subd. 9, providing that an office becomes vacant upon refusal or neglect to file the official oath or bond within the time prescribed, where a supervisor, whose term expired January 8, 1917, and who was re-elected on November 7, 1916, and given notice thereof 20 days later, did not file his official bond until February 28, 1917, or take his oath until April 23, 1917, the office was vacated, and he was thereafter holding under the extended term, and only entitled to the salary provided for such term; the word "neglect," in section 996, being used in the sense of "fail."—*Norton v. Lewis*, 168 P. 388, 34 Cal.App. 621.

Cal.App. 3 Dist. 2000. Physician who conceals the existence of a serious bedsore on a nursing home patient under his care, opposes her hospitalization where circumstances indicate it is medically

necessary, and then abandons the patient in her dying hour of need commits "neglect" within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act. West's Ann.Cal.Welf. & Inst. Code §§ 15610.07, 15657.—Mack v. Soung, 95 Cal. Rptr.2d 830, 80 Cal.App.4th 966, review denied.—Health 662.

Cal.App. 3 Dist. 1911. Code Civ.Proc. § 1511 (repealed 1931. See Prob.Code, § 701), provides that, "if an executor * * * neglects for two months after his appointment to give notice to creditors as prescribed * * * the court must revoke his letters" and appoint another executor. Pen.Code, § 7, subd. 2, provides that the term "neglect" imports a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily uses in acting in his own concerns. Held that, construing § 1511 in view of the policy of the law to effectuate testator's expressed will as far as possible, it gave the court a wide discretion in removing executors thereunder, and an executor should not be removed if the failure to publish the notice within the required time is satisfactorily excused; the terms "to neglect" and "to omit" not being synonymous, since to neglect is to omit by carelessness or design, while an omission may be involuntary and inevitable.—In re Chadbourne's Estate, 114 P. 1012, 15 Cal.App. 363.—Ex & Ad 35(8).

Colo. 1990. For attorney disciplinary purposes, inaction in the face of duty to proceed constitutes "neglect," and continued and chronic neglect over a period of two years must be considered willful. Code of Prof.Resp., DR 6-101(A)(3).—People v. Barber, 799 P.2d 936.—Atty & C 44(1).

Colo.O.P.D.J. 1999. By agreeing to perform requested services, an attorney represents that he will provide the services in accordance with the rules of professional conduct; if the attorney thereafter, absent either his client's permission or an appropriate withdrawal from the attorney/client relationship, fails to perform the agreed-upon professional services within a reasonable period of time, the attorney's misconduct constitutes "neglect."—People v. Hotle, 35 P.3d 185.—Atty & C 44(1).

Conn. 1941. Under statute imposing obligation of support on poor persons' relatives able to provide such support and providing that if relatives shall "neglect" to provide support an action may be brought to compel them to contribute, word "neglect" imports something more than a mere omission, something more than a failure without fault and imports an omission accompanied by some kind of culpability in the conduct of the party. Gen.St.1930, § 1693, and § 1717, as amended; Gen.St.Supp.1935, § 663c.—Town of Winchester v. Town of Burlington, 21 A.2d 371, 128 Conn. 185.—Paupers 37(2).

Conn. 1938. Under statute providing for support of a person who is unable to support himself, by certain designated relatives, and providing for bringing action against such a relative who neglects to provide support, the word "neglect" imports an omission accompanied by some kind of culpability

in the conduct of the parties and does not mean a mere omission or failure without fault. Gen.St. 1930, § 1717.—Tulin v. Tulin, 200 A. 819, 124 Conn. 518.—Paupers 37(2).

Conn. 1906. As used in Gen.St.1902, § 2499, authorizing an action by a wife against her husband for support when he neglects to support her, "neglect" means more than a mere omission or failure without fault. It imports omission accompanied by some kind of culpability in the conduct of the husband; the design of the statute being to compel the unwilling, and not to constrain those who have acted fairly and reasonably in the performance of the duty.—Lathrop v. Lathrop, 63 A. 514, 78 Conn. 650.

Conn.Cir.A.D. 1967. Word "neglect" as used in nonsupport statute connotes failure to fulfill legal obligation. C.G.S.A. § 53-304.—State v. Boyd, 236 A.2d 476, 4 Conn.Cir.Ct. 544.—Child S 653.

D.C. 1996. Term "neglect" of child, warranting protective intervention of state, is by its very nature the equivalent of negligence, that is, implying habits or omissions of duty or patterns of neglect. D.C.Code 1981, § 16-2301(9).—In re T.G., 684 A.2d 786.—Infants 156.

Fla. 1933. Under Comp.Gen.Laws 1927, § 4578, F.S. A. § 30.07, making sheriff responsible for the neglect and default of his deputies in the execution of their office, "default" has reference to the non-performance of a duty whether arising under contract or otherwise, and "neglect" means to omit to do or perform an act enjoined on one.—Swenson v. Cahoon, 152 So. 203, 111 Fla. 788.

Fla.App. 1 Dist. 1992. In order to prove that act of certified nursing assistant (CNA) of briefly leaving elderly person unattended in restorative dining room of nursing home was "neglect," under Adult Protective Services Act, Department of Health and Rehabilitative Services (HRS) had to prove that continued supervision of aged persons or disabled adults present in restorative dining rooms was essential to their well-being; nursing home's tacitly understood policy was insufficient to establish that CNA's actions constituted "neglect," absent any evidence of agency rule to that effect and no expert testimony that policy was generally accepted standard within nursing home industry. F.S.1989, §§ 415.102(13), 415.103(3), (3)(d)5.—K.M.T. v. Department of Health and Rehabilitative Services, 608 So.2d 865.—Health 204.

Fla.App. 1 Dist. 1992. Standard for "neglect" as applied to physician under Adult Protective Services Act is failure to provide medical services that reasonably prudent similar health care provider would deem acceptable and appropriate. West's F.S.A. § 415.102(12).—A. D'A. v. Department of Health and Rehabilitative Services, 596 So.2d 1192.—Health 618.

Fla.App. 4 Dist. 2001. Verbal arguments between parents were not sufficient to constitute "neglect" within the statutory definition to support an adjudication of dependency; no evidence was presented that child was injured or in risk of being

injured. F.S.1999, § 39.01(44).—K.R. v. Department of Children and Families, 784 So.2d 594.—Infants 156.

Fla.App. 4 Dist. 2001. For purposes of adjudicating child a dependent, a finding of "neglect" requires a child's mental or emotional health to be significantly impaired or at risk for significant impairment. F.S.1999, § 39.01(44).—K.R. v. Department of Children and Families, 784 So.2d 594.—Infants 156.

Fla.App. 4 Dist. 1998. Assisted living facility operator did not "neglect" elderly resident by failing to give him prescription sedative during his eight-day stay; sedative was not first prescribed during that stay, operator was given no directions as to when or how often it should be given, and administrative law judge actually found that resident did not suffer any ill-effect as result of not receiving sedative. West's F.S.A. § 415.102(20).—C.B. v. Department of Children and Family Services, 763 So.2d 356.—Asyl 3.

Fla.App. 5 Dist. 1997. Under revised statute defining neglect for purposes of Adult Protective Services Act, "neglect" is no longer simply what it has traditionally meant—failing to provide that which is essential to caring for another's well being—but now also includes any act of "carelessness" which could reasonably be expected to result in serious physical injury. West's F.S.A. § 415.102(20).—A.O. v. Department of Health and Rehabilitative Services, 696 So.2d 1358, review denied Department of Children and Families v. A.O., 703 So.2d 475.—Health 192.

Fla.App. 5 Dist. 1990. Language of statute defining parental "neglect" applies to parents who allow their child to be deprived of the essentials of life, like food, or permit the child to live in an environment where the child's physical health is in danger of being significantly impaired. West's F.S.A. § 39.01(27).—Hardy v. Department of Health and Rehabilitative Services, 568 So.2d 1314.—Infants 156.

Fla.App. 5 Dist. 1989. Determination by state Department of Health and Rehabilitative Services that parents failed to comply with all terms of a performance agreement did not constitute "neglect" as would warrant termination of parental rights. West's F.S.A. § 39.464(3).—Padgett v. Department of Health and Rehabilitative Services, 543 So.2d 1317, decision approved 577 So.2d 565.—Infants 156.

Ga. 1909. The absence of "ordinary diligence," defined by Civ.Code 1895, § 2898, as that care which every prudent man takes of his own property of a similar nature, is termed "neglect." Objection has sometimes been made to the qualifying words "slight," "ordinary," and "gross," as applicable to negligence, and the courts of some jurisdictions have preferred to use the term "ordinary neglect," or "negligence," as applicable to a want of due care under the circumstances, maintaining that at last "ordinary diligence" in the light of the circumstances is all that is required.—Southern Ry. Co. v. Davis, 65 S.E. 131, 132 Ga. 812.

Ga.App. 1988. "Neglect" of case by plaintiff's attorney, that resulted in judgment of dismissal, was not an "accident" or "mistake" as would entitle plaintiff to set aside judgment on those grounds. O.C.G.A. § 9-11-60(d)(2).—Moore v. Barfield, 375 S.E.2d 623, 189 Ga.App. 348, certiorari denied.—Pretrial Proc 596.

Idaho 1934. "Mistake" or "neglect" relied on for relief from default judgment must be such as may be expected of reasonably prudent person situated like judgment debtor (Code 1932, § 5-905).—Savage v. Stokes, 28 P.2d 900, 54 Idaho 109.—Judgm 143(3).

Idaho 1915. As used in Rev.Codes, § 5466, providing that if administrator refuse or neglect to indorse allowance or rejection this shall be equivalent to a rejection, the word "refuse" implies an attitude toward some demand, and the word "neglect" means merely a failure to perform due to negligence.—Powell-Sanders Co. v. Carssow, 152 P. 1067, 28 Idaho 201.—Ex & Ad 437(7).

Idaho App. 1992. "Neglect" supporting termination of parent's rights is situation in which child lacks parental care necessary for health, morals, or well-being; no demonstrable harm is required before parent-child relationship can be terminated. I.C. §§ 16-1601 et seq., 16-2005, subd. b.—Doe v. State, Dept. of Health and Welfare, 837 P.2d 319, 122 Idaho 644, review denied.—Infants 156.

Ill. 2002. "Neglect" of a child is the parental failure to exercise the care that the circumstances justly demand, and it embraces wilful as well as unintentional disregard of duty; it is not a term of fixed and measured meaning, but it takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes. S.H.A. 750 ILCS 50/1, subd. D(d).—In re D.F., 268 Ill.Dec. 7, 777 N.E.2d 930, 201 Ill.2d 476.—Infants 156.

Ill.App. 1 Dist. 1998. In general, "neglect" of minor within meaning of Juvenile Court Act is failure to exercise care that circumstances justly demand, and encompasses both wilful and unintentional disregard of parental duty. S.H.A. 705 ILCS 405/2-3(1)(a, b).—In Interest of M.Z., 229 Ill.Dec. 99, 691 N.E.2d 35, 294 Ill.App.3d 581.—Infants 156.

Ill.App. 1 Dist. 1997. "Neglect" supporting adjudication of child as ward of the court is a parent's failure to exercise the care demanded by the circumstances; it can be either a wilful or an unintentional disregard of parental duty.—In re J.W., 224 Ill.Dec. 739, 682 N.E.2d 300, 289 Ill.App.3d 613.—Infants 156.

Ill.App. 1 Dist. 1997. As general rule, child "neglect" is the failure to exercise care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty.—In Interest of K.G., 224 Ill.Dec. 534, 682 N.E.2d 95, 288 Ill.App.3d 728.—Infants 156.

Ill.App. 1 Dist. 1996. "Neglect" of minor includes both wilful and unintentional disregard of parental duties. S.H.A. 705 ILCS 405/2-3(1)(a).—

In re R.M., 219 Ill.Dec. 149, 670 N.E.2d 827, 283 Ill.App.3d 469.—Infants 156.

Ill.App. 1 Dist. 1995. "Neglect" of child encompasses both willful and unintentional disregard of parental duties. S.H.A. 705 ILCS 405/2-3(1)(a, b).—In re Edricka C., 212 Ill.Dec. 383, 657 N.E.2d 78, 276 Ill.App.3d 18, appeal denied 214 Ill.Dec. 858, 662 N.E.2d 424, 165 Ill.2d 551.—Infants 156.

Ill.App. 1 Dist. 1994. Generally, "neglect" of child is failure to exhibit regard necessitated by circumstances and includes willful and intentional disregard of parental duties. Ill.Rev.Stat.1991, ch. 37, ¶ 802-3(1)(b).—In Interest of B.C., 200 Ill.Dec. 231, 635 N.E.2d 570, 262 Ill.App.3d 906.—Infants 156.

Ill.App. 1 Dist. 1992. Under Juvenile Act, "neglect" of child is failure to exercise care that circumstances justly demand, and encompasses willful as well as unintentional disregard of parental duty. S.H.A. ch. 37, ¶ 802-3(b).—In re M.B., 182 Ill.Dec. 197, 609 N.E.2d 731, 241 Ill.App.3d 697.—Infants 156.

Ill.App. 1 Dist. 1991. "Neglect," for purposes of petition for adjudication of wardship, is generally viewed as failure to exercise regard that circumstances justly demand and encompasses willful as well as unintentional disregard of parental duties. S.H.A. ch. 37, ¶ 801-1 et seq.—In re S.D., 163 Ill.Dec. 207, 581 N.E.2d 158, 220 Ill.App.3d 498, appeal denied 167 Ill.Dec. 401, 587 N.E.2d 1016, 143 Ill.2d 639.—Infants 156.

Ill.App. 1 Dist. 1990. Evidence purportedly directed at mother's conduct rather than effect it necessarily had on children justified finding of "neglect" and adjudication of wardship, notwithstanding mother's contention that there was no showing that children were actually neglected; mother was hospitalized after suicide pact with her boyfriend was revealed, creating need for others to assume care of children, and mother failed to provide any financial support for children for period of several months, with result that those caring for children made false report in order to get some financial aid. S.H.A. ch. 37, ¶ 802-3(1)(a).—In Interest of Y.C., 151 Ill.Dec. 778, 565 N.E.2d 49, 206 Ill.App.3d 730, appeal denied *People v. Cathey*, 153 Ill.Dec. 377, 567 N.E.2d 335, 136 Ill.2d 547.—Infants 179.

Ill.App. 1 Dist. 1979. "Neglect," for purposes of child neglect proceedings concerning alleged injurious environment, is failure to exercise care that circumstances justly demand and embraces willful as well as unintentional disregard of parental duty. S.H.A. ch. 37, § 705-5(2).—In Interest of Christenberry, 26 Ill.Dec. 93, 387 N.E.2d 923, 69 Ill.App.3d 565.—Infants 156.

Ill.App. 1 Dist. 1976. "Neglect," as used in Juvenile Court Act, is the failure to exercise the care that the circumstances justly demand, and it embraces willful as well as unintentional disregard of duty; it is not a term of fixed and measured meaning, but takes its content always from specific circumstances, and meaning varies as the context of

surrounding circumstances change. S.H.A. ch. 37, § 702-4(1)(a).—In Interest of Stilley, 345 N.E.2d 777, 37 Ill.App.3d 193, reversed In re Stilley, 6 Ill.Dec. 873, 363 N.E.2d 820, 66 Ill.2d 515.—Infants 156.

Ill.App. 2 Dist. 2000. Generally, "neglect" is considered to be the failure by a responsible adult to exercise the care that circumstances demand and encompasses both willful and unintentional disregard of parental duty. S.H.A. 705 ILCS 405/2-3(1)(a, b).—In re S.S., 245 Ill.Dec. 808, 728 N.E.2d 1165, 313 Ill.App.3d 121.—Infants 156.

Ill.App. 2 Dist. 1999. "Neglect," for purposes of a parental rights termination proceeding, is the failure to exercise the care that the circumstances justly demand; it embraces wilful as well as unintentional disregard of duty; it is not a term of fixed and measured meaning; it takes its content always from the specific circumstances; and its meaning varies as the context of surrounding circumstances changes. S.H.A. 705 ILCS 405/2-29(2); 750 ILCS 50/1, subd. D(d).—In re A.B., 241 Ill.Dec. 487, 719 N.E.2d 348, 308 Ill.App.3d 227.—Infants 156.

Ill.App. 2 Dist. 1993. In general, "neglect" is considered to be failure by responsible adult to exercise care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty. Ill.Rev.Stat.1991, ch. 37, ¶ 802-3(a).—In re J.M., 184 Ill.Dec. 754, 613 N.E.2d 1346, 245 Ill.App.3d 909, appeal denied 190 Ill.Dec. 890, 622 N.E.2d 1207, 152 Ill.2d 560.—Infants 156.

Ill.App. 4 Dist. 2000. Corporal punishment given in a concerned, caring manner is not "abuse" and is not "neglect." S.H.A. 705 ILCS 405/2-18(1).—In re S.M., 243 Ill.Dec. 144, 722 N.E.2d 1213, 309 Ill.App.3d 702, appeal denied 246 Ill.Dec. 123, 729 N.E.2d 496, 188 Ill.2d 565.—Infants 156.

Ill.App. 4 Dist. 1995. In general, "neglect," for purposes of statute defining neglected and abused minors, is the failure to exercise the care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty; "neglect" is not of fixed and measured meaning, and takes its content from specific circumstances of each case. S.H.A. 705 ILCS 405/2-3(1, 2).—In Interest of M.K., 208 Ill.Dec. 242, 649 N.E.2d 74, 271 Ill.App.3d 820, appeal denied In re M.K., 212 Ill.Dec. 421, 657 N.E.2d 622, 163 Ill.2d 558.—Infants 156.

Ill.App. 5 Dist. 1982. "Neglect" is not a term of fixed and measured meaning, rather, it takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes.—In Interest of D. M. C., 63 Ill.Dec. 516, 438 N.E.2d 254, 107 Ill.App.3d 902.—Infants 156.

Ind. 1967. Child "neglect" within statutes defining child neglect and imposing duty upon parent to see that proper care is given child, is the want of reasonable care—that is, the omission of such steps as a reasonable parent would take, such as are

usually taken in the ordinary experience of mankind. Burns' Ann.St. §§ 10-813 to 10-815.—Eaglen v. State, 231 N.E.2d 147, 249 Ind. 144.—Child S 653.

Ind.App. 2 Dist. 1984. "Neglect," as used in rule of trial procedure providing for relief from judgment due to excusable neglect, includes attorney's failure to perform his duty to exercise due diligence by regularly checking court records to ascertain the status of pending cases. Trial Procedure Rule 60(B)(1).—Westlake v. Benedict, 469 N.E.2d 27, rehearing denied, and transfer denied.—Judgm 368.

Ind.App. 1904. "Care" and "carefulness" are antonyms of "neglect" and "negligence" and are conclusions.—Avery v. Nordyke & Marmon Co., 70 N.E. 888, 34 Ind.App. 541, dismissed 73 N.E. 119, 164 Ind. 186.—Trial 355(3).

Iowa 1944. The word "neglect", as in Civil Procedure Rule authorizing court to set aside default for excusable neglect, means omission of proper attention, disregard of duty from indifference or willfulness, failure to do, use, or keep anything, and negligence. Rules of Civil Procedure, rule 236.—Booth v. Central States Mut. Ins. Ass'n, 15 N.W.2d 893, 235 Iowa 5.—Judgm 143(3).

Kan. 1988. For purposes of Disciplinary Rule regarding neglect of entrusted legal matter, "neglect" involves indifference and consistent failure to carry out obligations which lawyer has assumed to his client or conscious disregard for responsibility owed to client, differs from concept of ordinary negligence, and cannot be found if act or omissions complained of were inadvertent or result of good faith error in judgment. Sup.Ct.Rules, Rule No. 225, Code of Prof.Resp., DR 6-101(A)(3).—Matter of Britt, 750 P.2d 409, 242 Kan. 725.—Atty & C 44(1).

Kan. 1983. "Neglect" involves indifference and consistent failure to carry out obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed client; concept of ordinary negligence is different from neglect in that neglect usually involves more than a single act or omission; neglect cannot be found if the actual omissions complained of were inadvertent or the results of an error in judgment made in good faith. Code of Prof.Resp., DR6-101(A)(3), K.S.A. 7-125.—State v. Dixon, 664 P.2d 286, 233 Kan. 465.—Atty & C 44(1).

Kan. 1910. Under a statute providing that, if any commissioner or other county officer shall "neglect" to perform any act which it is his duty to perform, he shall forfeit his office and be removed, the duty must be personal, and the act must be one which the officer has the legal capacity and authority to perform, or he cannot be guilty of neglect. The purpose of the statute is to prevent persons from continuing to hold office whose inattention to duty endangers the public welfare, and the "neglect" contemplated must disclose either willfulness or indifference to duty so persistent or in affairs of such importance that the safety of public interests is threatened. Irregularities in the publication of state-

ments of sums of money allowed and in advertisements for bids for bridge repair work, failure to publish estimates of expenditures upon which tax levies were made, and failure to advertise for bids for the repair of a bridge do not constitute legal causes for the removal of a county commissioner from office on the ground of neglect of duty.—State v. Kennedy, 108 P. 837, 82 Kan. 373.

Ky. 1905. The words "fail," "refuse," and "neglect," as used in St.1903, §§ 795-797, providing that any railroad company which "shall fail, refuse and neglect to comply with the provisions" of the act shall be guilty of a misdemeanor, are used interchangeably, and mean something more than an unavoidable and accidental violation of the statute.—Chesapeake & O.R. Co. v. Com., 84 S.W. 566, 119 Ky. 519, 27 Ky.L.Rptr. 176.

La.App. 1 Cir. 1932. Tenant's failure, through oversight, to pay rent until five days after due, held "neglect" within statute entitling landlord to cancellation of lease and expulsion of tenant. LSA-C.C. arts. 2710, 2712, 2729.—Edwards v. Standard Oil Co. of Louisiana, 141 So. 513, reversed 144 So. 430, 175 La. 720.—Land & Ten 108(1).

La.App. 2 Cir. 1995. For purposes of statute permitting termination of parental rights due to parent's simple neglect, term "neglect" means the parent's conduct may be found lacking if it causes or threatens harm to child. LSA-Ch.C. arts. 1003(8), 1015(3).—In Interest of J.L.N., 658 So.2d 272, 27,568 (La.App. 2 Cir. 6/21/95).—Infants 156.

Me. 2000. "Neglect," that is, the failure to undertake the necessary and appropriate actions to keep children safe and well cared for, will rarely constitute the "heinous or abhorrent treatment" necessary to allow court to relieve the Department of Human Services from obligation to provide efforts to reunify parent and child, as envisioned by the legislature. 22 M.R.S.A. § 4002, subd. 1-B, par. A.—In re Ashley S., 762 A.2d 941, 2000 ME 212.—Infants 156.

Md. 1990. Single inadvertent failure to appear in court may constitute "neglect" of a legal matter. Code of Prof.Resp., DR 6-101(A)(3) (1986).—Attorney Grievance Com'n of Maryland v. Ficker, 572 A.2d 501, 319 Md. 305.—Atty & C 44(1).

Mich. 1989. Because jurisdictional and termination provisions serve completely different functions in juvenile code, meaning of "neglect" in each statute should be explored independently. M.C.L.A. §§ 712A.2(b)(2), 712A.19, 712A.19a(e) (1987).—In re Jacobs, 444 N.W.2d 789, 433 Mich. 24.—Infants 156.

Mich. 1908. "Gross neglect," as used in written charges for the removal of a commissioner of parks and boulevards, is not confined to intentional official wrongdoing, since such acts would hardly be described by the word "neglect."—Bolger v. Common Council of City of Detroit, 117 N.W. 171, 153 Mich. 540.

Mich. 1894. "Neglect," as applied to a public officer, means a failure on his part to do and perform some of the duties of his office, and when

such neglect, from the gravity of the case or the frequency of the instances, becomes so serious in its character as to endanger or threaten the public welfare it is gross, within the meaning of the law, and justifies the interference of the executive upon whom is placed the responsibility of keeping the affairs of the estate in the proper condition by taking notice thereof. The term "gross neglect" is not limited only to intentional official wrongdoing. Such acts would hardly be described by the word "neglect."—*Attorney General v. Jochim*, 58 N.W. 611, 99 Mich. 358, 41 Am.St.Rep. 606, 23 L.R.A. 699.

Mich.App. 1987. "Neglect" sufficient to warrant termination of parental rights requires some degree of culpability, requiring parent to have committed act or omission which is blameworthy.—*Matter of Bedwell*, 408 N.W.2d 65, 160 Mich.App. 168.—*Infants 156*.

Mich.App. 1986. "Neglect," as used in statute authorizing termination of parental rights, entails some degree of culpability by way of either intentional or negligent disregard of children's needs. M.C.L.A. § 712A.19a(d-f).—*In re Sprite*, 400 N.W.2d 320, 155 Mich.App. 531.—*Infants 156*.

Mich.App. 1986. "Neglect" warranting termination of parental rights necessarily entails some degree of culpability on parent's part by either intentional or negligent disregard of child's needs; there must be some act or omission that is blameworthy. M.C.L.A. § 712A.19a(e).—*Department of Social Services v. Draper*, 389 N.W.2d 179, 150 Mich.App. 789, appeal denied, and reconsideration granted, vacated in part, appeal denied in part *Matter of Draper*, 397 N.W.2d 524, 428 Mich. 851.—*Infants 156*.

Mich.App. 1986. Termination of parental rights by reason of neglect entails a showing of culpability on part of parent through either intentional or negligent disregard of the child's needs; sheer inability to fulfill parental duties does not constitute "neglect"; rather, to be neglectful within meaning of statute, parent must have committed some act or omission which is blameworthy. M.C.L.A. § 712A.19a(e).—*Matter of Tedder*, 389 N.W.2d 149, 150 Mich.App. 688, appeal denied 394 N.W.2d 926, 426 Mich. 874.—*Infants 156*.

Mich.App. 1985. For purposes of determining neglect of a child, word "neglect" necessarily entails some degree of culpability by way of either intentional or negligent disregard of child's needs. M.C.L.A. § 712A.19a.—*Matter of McDuel*, 369 N.W.2d 912, 142 Mich.App. 479.—*Infants 154.1*.

Minn. 1912. Rev.Laws 1905, § 3696, limiting the time within which the priority of right of administration on the deceased's estate must be exercised, uses the word "neglect" synonymously with "fail."—*In re Lis' Estate*, 139 N.W. 300, 120 Minn. 122.—*Ex & Ad 20(2)*.

Minn.App. 2002. Evidence supported Department of Human Services' (DHS) finding that 78-year-old mother of adult daughter suffered from "neglect," within meaning of statute prohibiting

neglect of vulnerable adults by caregivers; daughter failed to obtain medical attention for her mother, who suffered from early stages of Alzheimer's disease and mild dementia, following mother's slip and fall, foot and ankle injury, and complaints of pain, which, as was later discovered, was caused by three broken bones. Minn.St.1998, § 626.5572, subd. 17(a)(1).—*In re O'Boyle*, 655 N.W.2d 331.—*Neglig 1803*.

Mo. 1993. Taxpayer's failure to file consumer use tax on out-of-state purchase of well-drilling rig constituted "neglect," for purposes of statute providing that there is no limitation on period of time Director of Revenue has to assess tax in case of a fraudulent return or neglect or refusal to make a return, and taxpayer's belief that no tax was due did not excuse such neglect; moreover, taxpayer made no attempt to ascertain its potential tax liability much less to make some disclosure to Department of Revenue. V.A.M.S. §§ 144.220, 144.610.—*Hewitt Well Drilling & Pump Service, Inc. v. Director of Revenue*, 847 S.W.2d 795.—*Tax 1314*.

Mo.App. E.D. 1997. For purposes of statute requiring appointment of guardian ad litem in any proceeding in which child abuse or neglect is alleged, "neglect" is defined as failure to provide, by those responsible for care, custody, and control of child, proper or necessary support, education as required by law, nutrition, or medical, surgical, or any care necessary for his well-being. V.A.M.S. § 452.423, subd. 1.—*White v. White*, 952 S.W.2d 320.—*Infants 78(1)*.

Mo.App. E.D. 1996. "Neglect" of child by natural parent, as will terminate parental rights and allow adoption without consent of natural parent, normally focuses on physical deprivation or harm, and is primarily a failure to perform duty imposed upon parent by law and by conscience. V.A.M.S. § 453.040(5).—*C.B.L. v. K.E.L.*, 937 S.W.2d 734, rehearing, transfer denied, and transfer denied.—*Adop 7.4(1)*; *Infants 156*.

Mo.App. E.D. 1996. In stepparent adoptions, "neglect" of child by natural parent, as will terminate parental rights and allow adoption without consent of natural parent, is quite often shown by failure to provide support without just cause or excuse, whether ordered by judicial decree or not. V.A.M.S. § 453.040(5).—*C.B.L. v. K.E.L.*, 937 S.W.2d 734, rehearing, transfer denied, and transfer denied.—*Adop 7.4(6)*; *Infants 156*.

Mo.App. E.D. 1990. "Neglect" necessary to obviate need for natural parent's consent to adoption by stepparent is primarily failure to perform duty imposed upon parent by law and by conscience. V.A.M.S. § 453.040(5).—*G.S.M. v. T.H.B.*, 786 S.W.2d 898.—*Adop 7.4(1)*.

Mo.App. E.D. 1989. Determination that parents' weekly placement of minor child in metal dog cage for two hours as punishment constituted "neglect," for purposes of determining whether minor was in need of care and treatment, was supported by substantial evidence. V.A.M.S. § 211.031, subd. 1(1)(a).—*M.A. v. J.A.*, 781 S.W.2d 94.—*Infants 177*.

Mo.App. S.D. 2001. Terms “neglect” and “abandonment,” as employed in the adoption statutes, embody different, but not mutually exclusive concepts. V.A.M.S. § 453.040(7).—In re C.M.B., 55 S.W.3d 889.—Adop 7.4(1), 7.4(2.1).

Mo.App. S.D. 2001. “Neglect,” in the context of the adoption statutes, focuses on physical deprivation or harm, and may be characterized as a failure to perform the duty with which the parent is charged by the law and by conscience. V.A.M.S. § 453.040(7).—In re C.M.B., 55 S.W.3d 889.—Adop 7.4(1).

Mo.App. S.D. 2001. “Neglect,” as employed in the adoption statutes, is ultimately a question of an intent to forego parental duties, which includes both an obligation to provide financial support for a minor child, as well as an obligation to maintain meaningful contact with the child. V.A.M.S. § 453.040(7).—In re C.M.B., 55 S.W.3d 889.—Adop 7.4(1).

Mo.App. S.D. 2000. The term “neglect” in statutory provision governing adoption without parental consent is ultimately a question of an intent to forego parental duties, which generally is an inferred fact, determined by conduct within the statutory period, combined with relevant conduct both before and after the period; the greatest weight is given to conduct within the statutory period, and the least weight is given to conduct after the petition for adoption is filed. V.A.M.S. § 453.040(5) (1996).—I.D. v. B.C.D., 12 S.W.3d 375.—Adop 7.4(1).

Mo.App. S.D. 2000. “Neglect” of child by natural parent, as will terminate parental rights and allow adoption without consent of natural parent, focuses on physical deprivation or harm, and is primarily a failure to perform the duty imposed upon the parent by law and by conscience. V.A.M.S. § 453.040(5) (1997).—In re K.L.C., 9 S.W.3d 768.—Adop 7.4(1).

Mo.App. W.D. 2001. “Intent” and “neglect” are mutually exclusive in the context of a termination of parental rights proceeding; intent refers to a willful act, while neglect is a general and a negative proposition meaning simply the failure to perform the duty with which a parent is charged by the law and by conscience.—In re J.K., 38 S.W.3d 495.—Infants 156.

Mo.App. W.D. 1995. “Neglect” as ground for termination of parental rights is failure to fulfill duty imposed on parent by law and by conscience.—In re Adoption of Z.T.H., 910 S.W.2d 830.—Infants 156.

Mo.App. W.D. 1993. Father’s allegations that mother was frequently absent from home and failed to adequately supervise her daughter while she was in mother’s custody were sufficient allegations of “neglect” to require appointment of guardian ad litem in proceeding for modification of custody. V.A.M.S. § 452.423, subd. 1.—S.K.B. v. J.C.B., 867 S.W.2d 651, rehearing denied.—Infants 78(7).

Mo.App. W.D. 1993. Husband’s evidence presented to show that wife was poor housekeeper and

that husband would be better custodial parent for child because he was a better housekeeper did not constitute an allegation of “neglect” which warranted appointment of guardian ad litem in dissolution of marriage action. V.A.M.S. § 452.423, subd. 1.—Gilman v. Gilman, 851 S.W.2d 15, rehearing, transfer denied.—Infants 78(7).

Mo.App. W.D. 1993. For purposes of statute requiring court to appoint guardian ad litem in any proceeding in which child abuse or “neglect” is alleged, “neglect” includes failure to provide proper or necessary support, education as required by law, nutrition or medical, surgical, or any other care necessary for child’s well-being. —V.A.M.S. §§ 210.110(5), 452.423, subd. 1.—Frazier v. Frazier, 845 S.W.2d 130.—Infants 78(1).

Mo.App. W.D. 1992. To find “neglect” by parent in adoption proceeding requires evidence that there was repeated or continuous failure by parent, although physically or financially able, to provide child with adequate food, clothing, shelter, education, or other care and control necessary for child’s physical, mental, or emotional health and development. V.A.M.S. § 211.447, subd. 2(2)(d).—C.E.H. v. L.M.W., 837 S.W.2d 947, rehearing, transfer denied, and transfer denied.—Adop 7.4(1), 7.4(6).

Mo.App. W.D. 1985. “Neglect” such as precludes necessity of natural parent’s consent to adoption connotes a physical deprivation or harm, and is a failure to perform the duty with which the parent is charged by law and conscience.—In re Adoption of Baby Boy W., 701 S.W.2d 534.—Adop 7.4(1).

Mo.App. 1973. Term “neglect,” as used in statute giving juvenile court jurisdiction over minors neglected by their parents, covers situation where parent fails and refuses to offer child necessary medical attention, including treatment for mental and emotional ills. Section 211.031 RSMo 1969, V.A.M.S.—In re C--- ---F--- ---B---, 497 S.W.2d 831.—Infants 156.

Mo.App. 1972. Coldness and indifference which juvenile officer alleged mother displayed toward child during visits with child who was in custody of county welfare office did not constitute “neglect” within purview of statute governing termination of parental rights. Section 211.441, subd. 1(2)(b) RSMo 1969, V.A.M.S.—In Interest of M. J. M., 483 S.W.2d 795.—Infants 156.

Mo.App. 1972. “Neglect” of a child is the intentional, deliberate and unjustifiable failure to perform duty with which parent is charged by law according to acceptable community standards. Section 211.441 RSMo 1969, V.A.M.S.—C. S. v. Smith, 483 S.W.2d 790.—Infants 156.

Mo.App. 1972. “Neglect” of child is the failure to perform the duty with which a parent is charged by law and by conscience.—S. K. L. v. Smith, 480 S.W.2d 119.—Infants 156.

Mo.App. 1938. Evidence that a mother and child went to live with mother’s family pursuant to a mutual agreement with father to live separately

until father could pay his debts, that mother returned father's checks and told him not to buy toys and clothes for child, and that after parties' divorce father requested that he be permitted to have child from time to time for whatever period might be agreeable to mother, showed that father did not "neglect" to provide proper care and maintenance for child within adoption statute, and hence mother and her second husband could not adopt child without father's consent. V.A.M.S. §§ 453.030-453.050.—*In re Perkins*, 117 S.W.2d 686, 234 Mo.App. 716.—Adop 13.

Mo.App. 1905. "Neglect," within Rev.St.1899, § 2228, V.A.M.S. § 563.340, declaring that every able-bodied married man who shall "neglect" or "refuse" to support his family shall be deemed a "vagrant," arises from an inattentive state of mind, want of care for, and utter disregard of the obligation resting on the husband to support his family, whereas the word "refuse" imports a willful disavowal or disregard of such obligation; and hence where a physician of good habits endeavored to establish a practice, maintained an office where he waited for patients, and attended to such calls as he had, contributing his entire income from his practice to the support of his wife and himself, he was not a "vagrant," so as to entitle his wife to a divorce under section 2921, V.A.M.S. § 452.010, declaring that, when the husband shall be guilty of such conduct as to constitute him a "vagrant," within the meaning of the law respecting "vagrants," the wife may be divorced, though he did not succeed in earning enough to support both of them, and she was compelled to contribute to their support from her separate means.—*Gallimore v. Gallimore*, 91 S.W. 406, 115 Mo.App. 179.

Mont. 1990. "Neglect," as used in statute granting authority to petition for Temporary Investigative Authority (TIA) over youth in danger of being abused or neglected, includes emotional deprivation. MCA 41-3-402(1).—*Matter of B.H.M.*, 799 P.2d 1090, 245 Mont. 179.—Infants 156.

Mont. 1975. Under evidence that mother did not pick up, hold, or play with infant, that apartment in which infant was kept was dirty and unkempt and littered with beer cans, and that infant was discovered overheated because portable heater had been placed too close to infant's crib, district court was justified in finding that mother's conduct constituted "neglect" of infant within meaning of statute allowing custody of infant to be transferred from parent. R.C.M.1947, §§ 10-1301, 10-1314.—*Matter of Henderson*, 542 P.2d 1204, 168 Mont. 329.—Infants 179.

Mont. 1945. Plaintiffs' counsel had right to rely on assurance of clerk of district court that judgment had been entered and was not guilty of "neglect" in failing to take further steps to have judgment entered, within statute requiring dismissal of an action when party entitled to judgment neglects for more than six months to have it entered. Rev.Codes 1935, § 9317, subd. 6.—*Couse v. Dietz*, 159 P.2d 886, 117 Mont. 539.—*Pretrial Proc* 594.1.

Neb. 1965. "Neglect" within provision of deed that premises conveyed for schoolhouse should revert to grantor or his heirs or assigns if school board or its successors should at any time "neglect" to use the premises for a schoolhouse is not synonymous with "omit", in that omission may be altogether involuntary and inevitable, while neglect must be either voluntary or inadvertent.—*McArdle v. School Dist. of Omaha*, 136 N.W.2d 422, 179 Neb. 122.—Schools 65.

Neb. 1965. Where school has been maintained for 97 years, and discontinuance of school was due to construction of interstate highway and removal of overpass concerning which school board had no control, school district did not "refuse" or "neglect" to use the property involved for schoolhouse within provision of deed providing for reverter to grantor or his heirs if school board or its successors should at any time thereafter "refuse" or "neglect" to use the premises for schoolhouse, and hence trial court properly quieted title in school district.—*McArdle v. School Dist. of Omaha*, 136 N.W.2d 422, 179 Neb. 122.—Schools 65.

Neb. 1955. "Neglect" within street railroad franchise provision that railroad should be liable for damages resulting by reason of neglect to keep tracks in repair or for obstructing streets or avenues is not synonymous with "omit", in that omission may be altogether involuntary and inevitable, while neglect must be either voluntary or inadvertent.—*Sullivan v. Omaha & Council Bluffs Street Ry. Co.*, 70 N.W.2d 98, 160 Neb. 342.—Urb R R 23.1.

Neb. 1918. Under Rev.St.1913, § 362, providing that, on "neglect" to comply with order for support of child, defendant may be imprisoned until order is complied with, the word "neglect" means careless omission of duty, and not omission from necessity.—*Brown v. Hendricks*, 165 N.W. 1075, 102 Neb. 100.—Child 69(7).

N.H. 1947. If a guardian or trustee keeps the funds of his trust separate from his own and accounts for the interest received, he is not to be charged when the money lies idle, except for his neglect, and it cannot be considered "neglect" if a sum sufficient to meet contingent expenses be kept on hand, or if a sum so small that a prudent person would not seek an investment for it lies idle.—*McInnes v. Goldthwaite*, 52 A.2d 795, 94 N.H. 331, 171 A.L.R. 1414.—Guard & W 54; Trusts 219(1).

N.J. 1999. Accidentally caused injuries can form the basis for a finding of "neglect" under statute defining "neglected child" as one whose physical, mental, or emotional condition has been impaired as result of the failure of his parent or guardian to exercise minimum degree of care in providing child with proper supervision or guardianship. N.J.S.A. 9:6-8.21, subd. c(4)(b).—*G.S. v. Department of Human Services, Div. of Youth and Family Services*, 723 A.2d 612, 157 N.J. 161.—Infants 156.

N.J. 1962. Even though parents evidenced sincere parental concern and affection for their child, their refusal, on religious grounds, to submit their infant child to blood transfusions necessary to save its life or mental health amounted to statutory

"neglect," and therefore it was proper to appoint a guardian and award custody of the infant to the guardian for limited purpose of authorizing transfusions. N.J.S.A. 9:2-9, 10.—*State v. Perricone*, 181 A.2d 751, 37 N.J. 463, certiorari denied 83 S.Ct. 189, 371 U.S. 890, 9 L.Ed.2d 124.—*Guard & W* 9.5; *Infants* 159.

N.J. 1958. Under statute imposing personal liability on corporate officers who neglect or refuse to file certificate of amount of capital, "neglect" signifies more than mere failure or omission and connotes willful failure to discharge, or reckless indifference to, a known obligation. N.J.S.A. 14:8-16.—*Frank Rizzo, Inc. v. Alatsas*, 142 A.2d 861, 27 N.J. 400.—*Corp* 338(1).

N.J.Super.Ch. 1994. Parental acquiescence to and tacit encouragement of consensual sexual relations between 13-year-old daughter and her 19-year-old paramour were "abuse" and "neglect" of daughter, for purposes of statute defining abused or neglected child as child whose parent commits or allows to be committed act of sexual abuse against child, and statute defining "abused child" as child whose physical, mental, or emotional condition has been impaired as result of failure of his parents to provide child with proper supervision. N.J.S.A. 9:6-8.21, subd. c(3), c(4)(b).—*New Jersey Div. of Youth and Family Services v. RW*, 641 A.2d 1124, 273 N.J.Super. 365.—*Infants* 156.

N.Y. 1997. Attempts to enforce valid foreign order granting temporary or permanent custody could be "neglect" within meaning of child protection statutes, if such attempted jeopardized mental or emotional health of children. McKinney's Family Court Act §§ 1012(h), 1036(c).—*Matter of Sayeh R.*, 670 N.Y.S.2d 377, 91 N.Y.2d 306, 693 N.E.2d 724.—*Infants* 156.

N.Y. 1997. For purpose of determining whether conduct of parent is "neglect" of child within meaning of child protection statute, minimum standard or degree of care required of parent must be expansive, taking into account special vulnerabilities of child. McKinney's Family Court Act § 1012(h).—*Matter of Sayeh R.*, 670 N.Y.S.2d 377, 91 N.Y.2d 306, 693 N.E.2d 724.—*Infants* 156.

N.Y. 1997. For purpose of determining whether conduct of parent is "neglect" of child within meaning of Family Court Act, parent who does not respond to special needs of child fails to exercise minimum degree of care, even if those needs do not seriously implicate general physical health; parents may not ignore fact that their conduct is impairing their children's emotional health. McKinney's Family Court Act § 1012(h).—*Matter of Sayeh R.*, 670 N.Y.S.2d 377, 91 N.Y.2d 306, 693 N.E.2d 724.—*Infants* 156.

N.Y. 1995. Finding of "neglect" as to child may be based on either actual physical, emotional or mental impairment or imminent danger of such impairment. McKinney's Family Court Act § 1012(f)(i).—*Nassau County Dept. of Social Services on Behalf of Dante M. v. Denise J.*, 637 N.Y.S.2d 666, 87 N.Y.2d 73, 661 N.E.2d 138.—*Infants* 156.

N.Y.A.D. 1 Dept. 1902. The word "imprudent" in an instruction, in an action for an injury caused by the premature starting of the street car, that, in all ordinary cases, to get aboard or attempt to get aboard of a moving public vehicle is imprudent, was held to have been used as a synonym or substituted and equivalent word for "neglect." "This seems to be apparent from the fact that the court refused to charge that it is not always a matter of negligence, as a matter of law, for a person to get upon a car while in motion, so that, even if the plaintiff boarded or attempted to board a car while in motion, the jury might find in his favor.—*Lobsenz v. Metropolitan St. Ry. Co.*, 76 N.Y.S. 411, 72 A.D. 181.

N.Y.A.D. 2 Dept. 1917. An allegation that a city had not settled or adjusted, or offered to settle or adjust, plaintiff's claim sufficiently meets the requirement of Greater New York Charter, Laws 1901, c. 466, § 261, that it must appear by allegation of the complaint that the Comptroller has neglected or refused to make an adjustment or payment of the claim, since "neglect" and "refuse" mean an omission of some act for the city's protection after opportunity, and such omission may be inferred from the absence of an offer for settlement.—*Sweeting v. Staten Island Midland Ry. Co.*, 162 N.Y.S. 961, 176 A.D. 494.

N.Y.A.D. 3 Dept. 1996. Evidence that mother and her boyfriend continued to permit boyfriend's 25-year-old developmentally disabled brother to stay in their home, and left mother's children alone in his care when they knew or should have known that brother was sexually abusing mother's younger daughter, was proof constituting "neglect" of children because it established that mother and boyfriend endangered all of children by their failure to exercise minimum degree of care in providing them with proper supervision or guardianship, in proceeding in which family court adjudicated children to be abused and neglected by mother and boyfriend. McKinney's Family Court Act § 1012(e)(iii), (f)(i)(B).—*Matter of Amy M.*, 651 N.Y.S.2d 688, 234 A.D.2d 854.—*Infants* 179.

N.Y.A.D. 3 Dept. 1994. "Neglect" of child may include failure to properly supervise by unreasonably allowing harm to be inflicted upon child. McKinney's Family Court Act § 1031.—*Matter of Kayla PP.*, 611 N.Y.S.2d 687, 204 A.D.2d 769.—*Infants* 156.

N.Y.A.D. 3 Dept. 1992. Failure to act to protect daughter from further harm from foster children was "abuse" and "neglect." McKinney's Family Court Act §§ 1012(e)(ii), (f)(i)(B), 1046(a)(ii).—*Matter of Erin QG.*, 580 N.Y.S.2d 502, 180 A.D.2d 944.—*Infants* 156.

N.Y.A.D. 4 Dept. 1998. Mother's failure to intercede to protect eldest child from physical abuse demonstrated a fundamental defect in her understanding of the duties of parenthood and amounted to "neglect." McKinney's Family Court Act § 1046(b)(i).—*Matter of Brandiwell K.*, 668 N.Y.S.2d 790, 247 A.D.2d 931.—*Infants* 156.

N.Y.A.D. 4 Dept. 1997. Emotional consequences to child in New York from attempt of

mother, a Florida resident, to enforce valid Florida orders of visitation and custody did not constitute "neglect" occurring in New York so as to provide basis for personal jurisdiction over mother in neglect proceeding. 28 U.S.C.A. § 1738A; McKinney's DRL § 75-a et seq.—*Matter of Sayeh R.*, 659 N.Y.S.2d 590, 239 A.D.2d 959, leave to appeal granted 661 N.Y.S.2d 178, 90 N.Y.2d 854, 683 N.E.2d 1052, reversed 670 N.Y.S.2d 377, 91 N.Y.2d 306, 693 N.E.2d 724.—*Infants* 156, 196.

N.Y.A.D. 4 Dept. 1953. Failure of surviving husband before applying for letters of administration on estate of deceased wife to pay State for hospitalization of incompetent wife did not constitute the "neglect" or "abandonment" which under Decedent Estate Law would deprive him of a distributive share of deceased wife's estate. Decedent Estate Law, § 87.—*In re Mead's Estate*, 119 N.Y.S.2d 579, 281 A.D. 943, affirmed 119 N.E.2d 587, 306 N.Y. 878.—*Des & Dist* 63.

N.Y.A.D. 4 Dept. 1953. The "abandonment", "neglect", or "refusal to support", which under Decedent Estate Law would deprive surviving husband of a distributive share of deceased wife's estate or right of election to take share of her estate as in intestacy, must be such abandonment or neglect as would be sufficient under Civil Practice Act to sustain judgment for separation upon either ground. Decedent Estate Law, §§ 18, 87; Civil Practice Act, § 1161.—*In re Mead's Estate*, 119 N.Y.S.2d 579, 281 A.D. 943, affirmed 119 N.E.2d 587, 306 N.Y. 878.—*Des & Dist* 63.

N.Y.Sup. 1976. Isolated incident wherein mother left two children, aged one and two years, unattended for approximately one-half hour while she went to nearby supermarket did not constitute "neglect" of children under the Family Court Act and, thus, under definition in Social Services Law of "maltreated child" as including a child under 18 years of age that is defined as a "neglected child" under the Family Court Act, finding of county commissioner of department of social services that mother's two children had been maltreated could not be sustained, and report of maltreatment in Central Register would be expunged. Family Ct. Act, § 1012(f); Social Services Law §§ 412, subds. 2, 6, 422, subds. 5, 8.—*Augustine v. Berger*, 388 N.Y.S.2d 537, 88 Misc.2d 487.—*Infants* 157.

N.Y.Sup. 1976. Statute permitting action against corporate director for "the neglect of, or failure to perform, or other violations of his duties in the management and disposition of corporate assets committed to his charge" does not mean that director is chargeable with ordinary negligence for having made improper decision, or having acted imprudently; "neglect" referred to in statute is neglect of duties, i. e., malfeasance or nonfeasance, and not misjudgment. Business Corporation Law § 720(a)(1)(A).—*Kamin v. American Exp. Co.*, 383 N.Y.S.2d 807, 86 Misc.2d 809, affirmed 387 N.Y.S.2d 993, 54 A.D.2d 654.—*Corp* 310(2).

N.Y.Sup. 1942. Where husband supported his wife, two children, and himself during his married life save for period when he was ill, during which

time husband was unable to pay his bills and wife supported him, the husband did not "neglect" or "refuse to provide" for his wife, so as to disqualify husband from taking distributive share in his wife's estate, since the quoted words imply willful conduct or conscious disregard. Decedent Estate Law, § 87, subd. (c).—*Burns v. Turnbull*, 37 N.Y.S.2d 380, reversed 41 N.Y.S.2d 448, 266 A.D. 779, reargument granted 48 N.Y.S.2d 453, 267 A.D. 986, on reargument 49 N.Y.S.2d 538, 268 A.D. 822, affirmed 62 N.E.2d 785, 294 N.Y. 889, appeal denied 62 N.E.2d 240, 294 N.Y. 809.—*Des & Dist* 63.

N.Y.Co.Ct. 1972. To "neglect" is to "omit," and for failure to make particular judgment or do certain thing in particular way to constitute neglect, within statute authorizing grand jury to submit report concerning neglect in public office, there must have been duty to make judgment or do thing. CPL 190.85, subds. 1, 2.—*In re Investigation of South Mall Financing*, 330 N.Y.S.2d 170, 69 Misc.2d 460.—*Gr Jury* 27.

N.Y.Mun.Ct. 1932. To "neglect" means to omit, as to neglect business, or payment, or duty, or work; it does not generally imply carelessness or imprudence, but simply an omission to do or perform some work, duty, or act.—*Eposito v. St. George Swimming Club*, 255 N.Y.S. 794, 143 Misc. 15.

N.Y.Gen.Sess. 1901. The term "neglect," in Pen.Code, § 117, making any public officer, or person holding a public trust or employment, who willfully neglects to perform any duty imposed by law, guilty of a misdemeanor, or in an indictment under such section, imports a want of such attention to the probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.—*People v. Herlihy*, 72 N.Y.S. 389, 35 Misc. 711, 16 N.Y.Crim.R. 33, reversed 73 N.Y.S. 236, 16 N.Y.Crim.R. 235, 66 A.D. 534, affirmed 63 N.E. 1120, 170 N.Y. 584.

N.Y.Fam.Ct. 1984. A finding of "neglect" will be sustained where parent has failed to exercise minimum degree of care in providing adequately for a child; "child abuse," on the other hand, is so serious per se, that parents must simply prevent it, even where that requires maximum degree of care. McKinney's Family Court Act § 1012(f)(i).—*Matter of Katherine C.*, 471 N.Y.S.2d 216, 122 Misc.2d 276.—*Infants* 154.1, 156.

N.Y.Dom.Rel.Ct. 1954. Leaving one's child alone in home or on streets unguarded, unattended and without provision made for its safety or protection, constitutes "neglect". Domestic Relations Court Act, § 61.—*Hunter v. Powers*, 135 N.Y.S.2d 371, 206 Misc. 784.—*Infants* 156.

N.Y.Dom.Rel.Ct. 1954. Compelling child ten years old to peddle or distribute religious literature at various hours of day, after school and even at night, without making provision for its protection and safety, constituted "neglect" notwithstanding contention controversy concerned only religious faith of child. Domestic Relations Court Act, § 61.—*Hunter v. Powers*, 135 N.Y.S.2d 371, 206 Misc. 784.—*Infants* 156.

N.Y.Dom.Rel.Ct. 1952. "Neglect" of child by parent is not only a failure to provide necessities of life, sustenance, clothing, shelter, food and warmth, but a failure to care, to look after, to guide, and to supervise child.—In re Carstairs, 115 N.Y.S.2d 314.—Infants 156.

N.Y.Dom.Rel.Ct. 1950. "Neglect" is an overt act or failure to do that which under law one is required to do or perform with relation to child in his or in her charge, and when omission or that which is overtly done is wilful and in response to meanness or viciousness or gross disregard of rights of child, it is contributing to neglect of child and is punishable. Domestic Relations Court Act, § 61, subd. 2.—People v. Phipps, 97 N.Y.S.2d 845.—Child S 653.

N.Y.Dom.Rel.Ct. 1949. To subject a child to a sense of insecurity either by way of rejection or by ill treatment or by precept, which will result in development of children of aggressive tendencies and delinquent conduct, is "neglect" of a child and neglect of a very serious nature.—In re Roe, 92 N.Y.S.2d 882, 196 Misc. 830.—Infants 156.

N.Y.Dom.Rel.Ct. 1940. "Neglect" of a child is not limited to mere failure to provide properly for it in so far as physical needs are concerned in accordance with the material ability of the parent or the one in custodial care, but extends to a denial to a child of the affection, guidance, and consideration, amounting in aggregate to a rejection of the child by parent or the one in custodial care.—In re Carl, 22 N.Y.S.2d 782, 174 Misc. 985.—Infants 156.

N.C.App. 1994. "Neglect" justifying termination of parental rights was established by evidence that parents did not attempt to correct conditions that led to previous findings of neglect by obtaining continued counseling, maintaining stable home or employment, or attending parenting classes until informed that termination proceedings were being pursued. G.S. § 7A-517(21).—Matter of Davis, 448 S.E.2d 303, 116 N.C.App. 409, review denied 452 S.E.2d 808, 338 N.C. 516.—Infants 156.

N.C.App. 1994. Sheriff did not "neglect" to serve process in mother's child support action, so that private process server could not be appointed pursuant to Rule of Civil Procedure, where sheriff twice attempted to serve process at address provided by mother and was told by residence that father did not live at that address, and mother failed to provide sheriff with any additional information concerning location of father, concerning her basis for believing that father was located at address provided, or concerning time at which father normally came and went to that address. Rules Civ.Proc., Rule 4(h), G.S. § 1A-1.—Williams v. Williams, 437 S.E.2d 884, 113 N.C.App. 226, affirmed 453 S.E.2d 165, 339 N.C. 608.—Proc 53.

N.C.App. 1984. Nonfeasance as well as malfeasance by a parent can constitute "neglect." G.S. § 7A-289.32(2, 6).—In re Adcock, 316 S.E.2d 347, 69 N.C.App. 222.—Infants 156.

N.C.App. 1983. Bruises and internal abrasions resulting from mother's disciplining of her five-

year-old child against what she perceived as her child's improper sexual conduct showed methods of care and discipline which were below normal standards, and therefore established "neglect" under child neglect statute. G.S. § 7A-517(21).—Matter of Thompson, 306 S.E.2d 792, 64 N.C.App. 95.—Infants 156.

Ohio 1997. "Neglect" in failing to timely file pleading, which must be shown to be excusable in order for grant of leave to file untimely pleading to be proper, is conduct that falls substantially below what is reasonable under the circumstances. Rules Civ.Proc., Rule 6(B)(2).—Davis v. Immediate Medical Services, Inc., 684 N.E.2d 292, 80 Ohio St.3d 10, 1997-Ohio-363, reconsideration denied 686 N.E.2d 276, 80 Ohio St.3d 1449.—Plead 40, 85(3).

Ohio 1995. For attorney discipline purposes, attorney's conduct may constitute "neglect" when attorney fails to advance client matter for which he has been retained; neglect is different from negligence and usually requires pattern of disregarding obligations or repeated omissions by attorney. Code of Prof.Resp., DR 6-101(A)(3).—Disciplinary Counsel v. Fowerbaugh, 658 N.E.2d 237, 74 Ohio St.3d 187, 1995-Ohio-261, reinstatement granted by 672 N.E.2d 1016, 77 Ohio St.3d 1221.—Atty & C 44(1).

Ohio 1995. "Neglect" of legal matter, within meaning of Code of Professional Responsibility, is different from negligence and usually requires pattern of disregarding obligations or repeated omissions by attorney. Code of Prof.Resp., DR 6-101(A)(3).—Toledo Bar Assn. v. Dzienny, 648 N.E.2d 499, 72 Ohio St.3d 173, 1995-Ohio-307.—Atty & C 58.

Ohio 1924. Verdict of guilty of "abandoning" child held sufficient under statute against "neglect."—Norman v. State, 142 N.E. 234, 21 Ohio Law Rep. 412, 21 Ohio Law Rep. 413, 109 Ohio St. 213, 2 Ohio Law Abs. 68, certiorari denied 44 S.Ct. 453, 264 U.S. 595, 68 L.Ed. 867.—Child S 668; Crim Law 875(3).

Ohio App. 11 Dist. 1999. Clear and convincing evidence supported determination that single mother was guilty of "neglect" for leaving her six- and eight-year-old sons unsupervised for two hours each day in late afternoon and for leaving six-year-old son at home entirely alone for two days each week, notwithstanding evidence that boys were very bright, mature and responsible for their ages, testimony by day care director that boys could be left alone for a few hours occasionally, mother's provision of extensive instructions regarding boys' activities in her absence, and guardian ad litem's recommendation that court not find neglect, given pattern, regularity and length of unsupervised periods and mother's failure to acknowledge inherent dangers of the situation, indicating that situation would continue. R.C. §§ 2151.03(A)(2), 2151.011(B)(1).—In re Zeiser, 728 N.E.2d 10, 133 Ohio App.3d 338, appeal not allowed 713 N.E.2d 1049, 86 Ohio St.3d 1437.—Infants 179.

Ohio Com.Pl. 1951. The word "neglect" in the statute penalizing one having charge of a county jail

who "neglects" or refuses to obey a regulation lawfully prescribed by the Court of Common Pleas for the regulation of such jail means an unintentional failure to act, so that the statute may be violated by an unintentional failure to conform to a lawfully prescribed jail rule or by an unintentional failure to perform a duty in respect to the jail. Gen.Code, § 12886.—*State v. Harland*, 105 N.E.2d 293, 61 Ohio Law Abs. 455.—Prisons 10.

Ohio Com.Pl. 1951. A "neglect" means something different from a "refusal" which means a denial or declination to do what is requested or ordered, while a "refusal" is a willful, conscious and deliberate act.—*State v. Harland*, 105 N.E.2d 293, 61 Ohio Law Abs. 455.

Okla. 1977. In determining whether child is neglected within meaning of Dependent and Neglected Children Act, term "neglect," is defined as disregard of duty, owing to indifference or wilfulness. 10 O.S.Supp.1976, § 1101 et seq.—*Price v. Price*, 573 P.2d 251, 1977 OK 205.—Infants 156.

Okla. 1970. As respects the determination of whether a child is neglected, word "neglect" is the disregard of duty owing to indifference or wilfulness. 10 O.S.Supp. § 1101.—*In re Vilas*, 475 P.2d 615, 1970 OK 190.—Infants 156.

Okla. 1957. The word "neglect" as respects custody of children is the disregard of duty owing to indifference or wilfulness.—*In re Sweet*, 317 P.2d 231, 1957 OK 250.—Infants 156.

Okla. 1929. The word "neglect" may mean to omit or forbear to do a thing that can be done, or that is required to be done, but is not always synonymous with omit since it may also import an absence of care or attention in the doing or omission of a given act, depending on the connection in which it is used and the meaning intended.—*State ex rel. Dabney v. Sheldon*, 276 P. 468, 135 Okla. 278, 1929 OK 74.

Or. 1996. Lawyer's failure to take action after being retained for legal services constitutes "neglect," in violation of rule providing that lawyer shall not neglect legal matter entrusted to him/her. Code of Prof.Resp., DR 6-101(B).—*In re Conduct of Sousa*, 915 P.2d 408, 323 Or. 137.—Att'y & C 44(1).

Or. 1940. A complaint alleging that plaintiff neglected to consult an attorney and appear in a suit in which he was served with summons, because of assurances given him by those who controlled the affairs of his co-defendant in that suit that arrangements were being made for payment of the claim sued on, that plaintiff, on learning thereafter of entry of decree against him as defendant in that suit on account of his default, filed a motion to vacate the decree, that the court took the motion under advisement, but that more than a year went by without a decision on the motion, was not sufficient to entitle plaintiff to a decree in equity to set aside the decree against him on ground of inadvertence, surprise, and excusable neglect, since the facts disclosed "neglect" but not "excusable neglect". ORS

16.050, 18.160.—*Marsters v. Ashton*, 107 P.2d 981, 165 Or. 507.—Judgm 460(3).

Or. 1937. The failure of a father, who lived more than three miles from schoolhouse, to send an 11 year old daughter to school, was not "neglect" within statute defining a "dependent child" as one whose home was an unfit place for children by reason of neglect of parents, in view of statute providing that children over age 10 living more than three miles from school were not required to attend school. Section 35-2101 (repealed 1951, c. 572, § 1, See ORS 339.010); § 33-619, ORS 419.102, 419.502.—*In re Schein*, 69 P.2d 293, 156 Or. 661.—Infants 156.

Or.App. 1991. Mother's behavior in preventing father from seeing child constituted constraint sufficient to excuse father's failure to have more than minimal contact with his daughter such that failure of contact was not "neglect" within meaning of statute permitting adoption of child without consent of parent if parent has neglected child. ORS 109.324.—*Hairston v. Threats*, 804 P.2d 1213, 105 Or.App. 350.—Adop 7.4(4).

Or.App. 1985. "Neglect," for purposes of ORS 109.324, which provides for dispensing with requirement of parent's consent to adoption on finding willful neglect, is evaluated by presence or absence of minimal expressions of concern, which ordinarily are measured in terms of money payments and personal contacts.—*Mead v. Roberts*, 702 P.2d 1134, 74 Or.App. 238.—Adop 7.4(2.1).

Or.App. 1984. Mother who called child periodically, requested that child call her collect, sent child gifts on three occasions, attempted to visit child, and petitioned for modification of decree of dissolution to allow her visitation rights, did not "neglect" child within meaning of statute providing that if a parent has wilfully deserted or neglected to provide proper care and maintenance for a child for one year preceding filing of adoption petition, consent of such parent to the adoption is not required. ORS 109.324.—*Matter of Adoption of DaCosta*, 677 P.2d 65, 67 Or.App. 84.—Adop 7.4(1).

Or.App. 1973. "Neglect" to be without just and sufficient cause, thereby obviating need of parent's consent to adoption, must be intentional, deliberate or wilful, and the failure to provide support and care must be voluntary and knowing. ORS 109.324.—*Dunne v. McCashum*, 508 P.2d 821, 13 Or.App. 66.—Adop 7.4(1).

Pa. 1948. That wife was not receiving that degree of control over her husband's income to which she felt entitled did not establish "neglect" within statute authorizing court to order husband to pay reasonable sum for support if husband neglected to support wife without reasonable cause. 18 P.S. § 4733.—*Com. v. George*, 56 A.2d 228, 358 Pa. 118.—Hus & W 304.

Pa. 1916. Under agreement for damages for delay in completion of construction contract, instruction authorizing recovery for delay due to contractor's "neglect" was not erroneous as authorizing recovery only for misconduct.—*Foye v. Lilley Coal*

& Coke Co., 96 A. 987, 251 Pa. 409.—Contracts 353(8).

Pa.Super. 1988. For purpose of statute providing that judgment creditor who shall "fail" or refuse to comply with request for entry of satisfaction shall pay liquidated damages to debtor, "fail" simply means to "omit" or "neglect", and does not imply requirement of willfulness or "unreasonableness". 42 Pa.C.S.A. § 8104(b).—Key Sav. and Loan Ass'n v. Louis John, Inc., 549 A.2d 988, 379 Pa.Super. 226, appeal denied 564 A.2d 1260, 523 Pa. 632, appeal granted Petition of Cutillo, 568 A.2d 1247, 524 Pa. 597, appeal granted Key Sav. and Loan Associations v. Louis John, Inc., 568 A.2d 1248, 524 Pa. 597, appeal dismissed 605 A.2d 1223, 529 Pa. 573.—Judgm 896.

Pa.Super. 1938. Recovery can be had on constable's statutory bond for neglect of constable's duty to serve writs of summons and attachments, to make levies, and to sell goods seized in execution process, and liability is not confined to injuries from negligent performance of duty, since word "neglect" means failure to perform or discharge a duty and covers positive official misdoing or official misconduct as well as negligence. 13 P.S. § 9.—Com. ex rel. and to Use of Allegheny County v. De Luca, 200 A. 712, 131 Pa.Super. 451.—Sheriffs 157(4).

R.I. 1926. Taxpayer, incapacitated by dangerous illness, when account of ratable estate should have been given assessors, held not barred from relief against excessive assessment by "neglect" or "refusal" to bring in such account. Gen.Laws 1923, §§ 827, 828.—Bishop v. Tax Assessors of City of Newport, 133 A. 342, 47 R.I. 351.—Tax 462.

S.C. 1938. The "neglect" mentioned in the statute giving right of action against a municipality to one injured through defect in street, but providing that municipality shall not be liable unless such defect was occasioned by its neglect, is the same as "negligence," which is want of ordinary care, and may consist of omission or nonaction. Code 1932, § 7345.—Bruce v. City of Spartanburg, 197 S.E. 823, 187 S.C. 322.—Mun Corp 762(1).

S.C. 1909. The "neglect" mentioned in the statute defining the liability of a city for injuries to pedestrians on defective sidewalks means the want of ordinary care, and the city must, to escape liability, use ordinary care to keep defects out of its streets.—Berry v. Greenville, 65 S.E. 1030, 84 S.C. 122, 19 Am.Ann.Cas. 978.—Mun Corp 763(1).

Tenn.Ct.App. 1994. Within statute providing that nursing home residents "must not be willfully abused or neglected" and providing for Type B civil monetary penalty for violation, word "willfully" modifies "neglected" as well as "abused," but with meaning appropriate to each word; "abuse" implies overt act or deed, which is presumed to be intentional unless shown to be inadvertent or accidental, and result of deed is presumed to be intentional unless shown otherwise, while "neglect" is failure to perform a deed, and neither the omission or its result is presumed to be intentional unless intent is shown or the circumstances are such as to imply intent. T.C.A. §§ 68-11-801, 68-11-803,

71-6-102.—Claiborne and Hughes Convalescent Center, Inc. v. State, Dept. of Health, 881 S.W.2d 671, appeal denied.—Health 276.

Tex.Civ.App. 1909. Under Rev.St.1895, art. 790, Vernon's Ann.Civ.St. art. 1573, providing that no county shall be sued unless the claim on which such suit is founded shall have first been presented to the county commissioners' court for allowance, and such court shall have neglected or refused to audit the same, "neglect" is sufficiently shown by evidence that the court has been given a reasonable time within which to act, and has failed to allow the claim.—Williams v. Bowie County, 123 S.W. 199, 58 Tex.Civ.App. 116.—Counties 213.

Utah App. 1999. "Neglect" for purposes of the child neglect statute is consistent with the derivative term "negligence" as used in the tort context, which simply means the failure to use reasonable care; the only difference is that rather than focusing on the prudent person in similar situations the statute refers to the proper or necessary conduct of a parent, guardian, or custodian. U.C.A.1953, 78-3a-103(1)(r)(i)(C).—State ex rel. N.K.C., 995 P.2d 1, 1999 UT App 345.—Infants 156.

Vt. 1970. Phrase "without proper parental care" is construed in less restricted sense than word "neglect" which, in legal sense, means not doing what is required by law to be done. 33 V.S.A. § 632(12).—In re Rathburn, 266 A.2d 423, 128 Vt. 429.—Infants 156.

Vt. 1940. Where defendant's wife, after defendant had furnished her with a good home with necessary food, medical attention, and clothing, left the home without fault of defendant and resided elsewhere, defendant was not guilty of a "default" or "neglect," within statute, so as to authorize towns to recover from a husband for expenses incurred in support of a wife if husband, by neglect or default, suffers wife to become chargeable upon town as a pauper. P.L.3935.—Town of Milton v. Bruso, 10 A.2d 203, 111 Vt. 82.—Paupers 37(1).

Vt. 1940. "Neglect," as used in statute authorizing towns to recover from a husband for expenses incurred in support of a wife if husband, by neglect or default, suffers wife to become chargeable upon town as a pauper, does not mean a mere omission without fault, but imports an omission accompanied by some kind of culpability. P.L.1935.—Town of Milton v. Bruso, 10 A.2d 203, 111 Vt. 82.—Paupers 37(1).

Vt. 1908. An instruction in an action against a town for injuries to a traveler, caused by a defective bridge, that it was the duty of the town to keep the bridge reasonably safe for the amount and kind of travel that might be expected to pass over it, and that, if the town was chargeable with any fault in respect of such duty, the liability attached, and the town was liable for accidents caused by reason of defects existing through the fault of the town, "and this, without notice to it, or regardless of the question of neglect," etc., was not erroneous, because of the use of the quoted phrase, the word "neglect" therein being used in its ordinary legal sense.—

Graves v. Town of Waitsfield, 69 A. 137, 81 Vt. 84.—Bridges 46(13).

Wash. 1941. The failure to note action for trial is as much a "neglect" or "failure" within practice rule requiring dismissal of action without prejudice for want of prosecution when plaintiff neglects to note action for trial within year after issue has been joined when the failure is caused by inadvertence or prompted by honest motives, as it is if brought about by bad faith. Rem.Rev.Stat. §§ 308–3, 319.—State ex rel. Woodworth & Cornell v. Superior Court for King County, 113 P.2d 527, 9 Wash.2d 37.—Pretrial Proc 588.

Wash. 1912. The purpose of Rem. & Bal.Code, § 8631, providing that if any railroad company shall "refuse or neglect" to obey any order of the Railroad Commission, the company shall be subject to a penalty, is to impose a penalty for neglect or refusal, and where a company fails to perform an act required by an order within the time specified therein, it is immaterial whether the failure resulted from willful refusal or neglect, or from mere mismanagement; the word "neglect" meaning omission, or forbearance to do a thing that can be done, or that is required to be done, and it does not generally imply carelessness or imprudence, but simply an omission to perform.—State v. Great Northern Ry. Co., 123 P. 8, 68 Wash. 257.

W.Va. 1999. For purposes of an attorney disciplinary case alleging neglect of a legal matter, "neglect" involves indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client. ABA Code of Prof.Resp., DR 6–101(A)(3); Rules of Prof.Conduct, Rule 1.3.—Lawyer Disciplinary Bd. v. Kupec, 515 S.E.2d 600, 204 W.Va. 643.—Atty & C 44(1).

W.Va. 1994. Failure to record easements promptly and admission of misplacing easements after 22 months of unanswered letters and complaints constitutes "neglect" within meaning of Rules of Professional Conduct and Code of Professional Responsibility. Rules of Prof.Conduct, Rule 1.3; Code of Prof.Resp. 6–101(A), (A)(3).—Committee on Legal Ethics of the West Virginia State Bar v. Karl, 449 S.E.2d 277, 192 W.Va. 23.—Atty & C 44(1).

W.Va. 1973. "Neglect" within meaning of statute allowing state department to present a petition to juvenile court if it believes a child is neglected is not a term of fixed and measured meaning and its meaning varies as circumstances change. Code, 49–6–1.—State ex rel. Moore v. Munchmeyer, 197 S.E.2d 648, 156 W.Va. 820.—Infants 156.

W.Va. 1905. Since in this state the liability of a municipal corporation for injuries caused by defects in street and sidewalks is absolute, an instruction that this was a latent defect, for which the defendant was responsible by reason of its neglect in not repairing the sidewalk, the word "neglect" could not have been used in its ordinary legal sense, and must be deemed to have been used to signify mere failure to repair, although it did not appear that the

corporation had had any knowledge of the defect.—Campbell v. City of Elkins, 52 S.E. 220, 58 W.Va. 308, 2 L.R.A.N.S. 159.

Wis. 1976. As used in statute providing for corrections of errors in bids made to public bodies, "neglect" should include omission or oversight; an omission or oversight which results in forfeiture is inexcusable where it is due to bidder's failure to exercise ordinary care. W.S.A. 66.29(5).—Nelson Inc. of Wisconsin v. Sewerage Commission of City of Milwaukee, 241 N.W.2d 390, 72 Wis.2d 400.—Pub Contr 12.

Wis. 1960. In statute providing for termination of parental rights where parents have substantially and continuously or repeatedly refused to give child necessary parental care and protection or where the parents have substantially and continuously neglected to provide child with necessary care, distinct meaning must be given to the terms "refusal" and "neglect". W.S.A. 48.40(2)(b, c).—In re Johnson, 100 N.W.2d 383, 9 Wis.2d 65.—Infants 156.

Wis. 1932. Evidence of corrupt conduct must be offered, since, where official having discretion in matter acts on his judgment in good faith, although erroneously, such acts are not "corrupt" within meaning of St.1929, §§ 348.28 and 348.29; and likewise taking of no action in his discretion, if error, is not "neglect" as term is used in St.1929, §§ 348.28 and 348.29.—State v. District Court of Milwaukee County, 240 N.W. 406, 206 Wis. 600, 206 Wis. 609.

NEGLECT AND REFUSAL

N.Y.A.D. 1 Dept. 1908. Plaintiff contracted to procure consignment to defendant of some of the product of silk mills, and defendant agreed to pay commissions on the sale of the product consigned. The contract was to continue for a year, and thereafter from year to year until terminated by notice, and it provided that on "neglect and refusal" of plaintiff to perform his agreement, and at the expiration of the agreement, defendant might sell the goods on hand. The company owning the mills refused to consign any product to defendant so long as plaintiff was retained as sales agent, and defendant was so notified. Held, that plaintiff, on being unable to continue to consign goods, was guilty of a breach of contract, the inability to continue not being "neglect and refusal," and defendant was justified in canceling the contract for the future, and might enter into a contract with the company for the consignment of future goods. Order (1907) 103 N.Y.S. 982, 54 Misc.Rep. 96, affirmed.—Napier v. Spielmann, 111 N.Y.S. 1009, 127 A.D. 711.—Contracts 261(5).

NEGLECTED

C.A.2 (N.Y.) 1974. In accepting and retaining custody of children alleged to have been "neglected" or "abandoned," private child-caring institutions perform a "public function" and there is thus "state action" within meaning of civil rights act. Social Services Law N.Y. § 395; 42 U.S.C.A. § 1983.—Perez v. Sugarman, 499 F.2d 761.—Civil R 198(1).

Cal.App. 2 Dist. 1959. Where proprietor of pharmacy was absent for 45-minute period for purpose of eating, and registered pharmacist had not been placed in charge of pharmacy during that period, proprietor had "failed" or "neglected" to leave registered pharmacist in charge in violation of statutory provision that proprietor of pharmacy who fails or neglects to place in charge of pharmacy registered pharmacist is guilty of misdemeanor, as charged in accusation in proceeding for suspension of proprietor's license to practice as licentiate in pharmacy. West's Ann.Bus. & Prof.Code, § 4386.—*Brodsky v. California State Bd. of Pharmacy*, 344 P.2d 68, 173 Cal.App.2d 680.—Health 211.

Cal.App. 5 Dist. 1975. Under evidence that mother constantly kept home and children in filthy, unsanitary condition, that infant was fed unsanitary food from dirty bottles, and that medical examination of infant revealed serious height and weight deficiencies, dehydration, and malnutrition, trial court was justified in impliedly finding that child had been "neglected" by mother within meaning of child neglect statute. West's Ann.Civ.Code, § 232(b).—*In re Susan M.*, 125 Cal.Rptr. 707, 53 Cal.App.3d 300.—Infants 179.

D.C. 1998. In determining whether trial judge erred in finding that child was neglected, appellate court used the word "neglected" in its limited legal sense within meaning of statute, providing that neglected child is a child who is without proper parental care or control, and not in the sense that mother had failed in her duty to her child in any other respect. D.C.Code 1981, § 16-2301(9).—*In re E.H.*, 718 A.2d 162.—Infants 254.

Fla.App. 5 Dist. 1986. Fact that mother, through lack of education and experience, rather than through neglect and mistreatment, failed to provide what state considered adequate feeding for baby did not establish that baby was "neglected" so as to support declaration of dependency and placement of baby in foster home. West's F.S.A. § 39.01(9)(a), (27).—*In Interest of C.W.*, 490 So.2d 175.—Infants 154.1.

Ill.App. 4 Dist. 1996. Evidence sustained finding that daughter was "neglected" within meaning of statute, in that her environment was injurious to her well being; daughter's father had prior battery conviction for fondling breasts of his stepdaughter, father's older daughter had been adjudged neglected and was taken into protective custody, father was uncooperative with Department of Children and Family Services, and father refused to engage in sexual abuse counseling. S.H.A. 705 ILCS 405/2-3(1)(b).—*In re A.D.W.*, 215 Ill.Dec. 308, 663 N.E.2d 58, 278 Ill.App.3d 476.—Infants 177.

La.App. 1 Cir. 1984. Trial court was not manifestly erroneous in its factual finding that landlord "neglected" to make necessary repairs of replacing six ballasts in lighting system within meaning of statute allowing lessee to make repairs and deduct the cost from rent due where lessor had at least one month to replace the six ballasts and repairs only took three hours. LSA-C.C. arts. 2694, 2712.—

Laurel Lea Shopping Center v. Parker, 457 So.2d 822.—Land & Ten 285(4).

Minn.App. 1984. Children are not "neglected" in Minnesota merely because parent is harsh disciplinarian. M.S.A. § 260.015, subd. 10.—*Matter of Welfare of C. Children*, 348 N.W.2d 94.—Infants 154.1.

Miss. 1951. A minor child who is not supplied with necessary surgical and medical care becomes "neglected" and penalties may be imposed against parents who omit the performance of their duty in such respect. Laws 1946, c. 207, §§ 2(h), 12, 13.—*Eggleston v. Landrum*, 50 So.2d 364, 210 Miss. 645, 23 A.L.R.2d 696.—Child S 653; Infants 156.

Mo.App. 1958. The "depravity" of its mother which will render a child "neglected" consists of a deficiency of moral sense and rectitude.—*State v. Greer*, 311 S.W.2d 49.—Infants 158.

Mo.App. 1938. Under statute providing that the court may not decree the adoption of any minor without the written consent of its parents unless the parents have willfully abandoned child or neglected to provide proper care and maintenance for two years before filing of a petition for adoption, the word "neglected" was used in the sense of a designed refusal or unwillingness to perform one's duty, and the adverb "willfully" modifies the verb "neglected" no less than it does the verb "abandoned." V.A.M.S. §§ 453.030-453.050.—*In re Perkins*, 117 S.W.2d 686, 234 Mo.App. 716.—Adop 7.4(1).

Mont. 1980. Where natural mother of child was provided with education in nutrition, information, and necessary training relating to general care of her child by various agencies and Welfare Department personnel, best interest of child found to be "neglected" within meaning of statute permitting legal custody of neglected children to be transferred to Department of Social and Rehabilitation Services required permanent custody to be awarded to Department, with authority to consent to adoption, as opposed to granting natural mother permission to enroll herself and child in single mother program. MCA 41-3-102(2)(a), 41-3-406(1)(b)(ii).—*Matter of M. R. L.*, 608 P.2d 134, 186 Mont. 468.—Infants 156.

Neb. 1966. Under statute governing proceedings to declare children neglected or dependent and referring to health, morals, or well-being of child, and also to lack of proper parental care by reason of fault or habits of parent, guardian or custodian, word "neglected" does not apply solely to physical neglect without any relationship to morals or well-being of children. R.S.Supp.1965, § 43-201.—*In re Otto*, 147 N.W.2d 164, 181 Neb. 96.—Infants 156.

N.H. 1996. Child of incarcerated parent is not necessarily "neglected"; rather, such child is "neglected" only if incarcerated parent is unable to discharge his responsibilities to and for the child because of the incarceration. RSA 169-C:3, subd. 19(c).—*In re Thomas M.*, 676 A.2d 113, 141 N.H. 55.—Infants 156.

N.Y.A.D. 1 Dept. 1962. Refusal of parents to consent to a blood transfusion for their child, although operative procedure might have made a transfusion essential for safety of the child, warranted finding that child was "neglected" within the Domestic Relations Court Act. Domestic Relations Court Act, § 2, subd. 17(g).—*Santos v. Goldstein*, 227 N.Y.S.2d 450, 16 A.D.2d 755, appeal dismissed 232 N.Y.S.2d 1026, 12 N.Y.2d 642, 185 N.E.2d 552, motion dismissed 233 N.Y.S.2d 465, 12 N.Y.2d 672, 185 N.E.2d 904.—Infants 156.

N.Y.A.D. 3 Dept. 1993. Evidence supported finding that child was "neglected"; evidence showed that mother was unable to care for child because of mother's ongoing mental illness, that mother resisted treatment, that there was only possibility that mother's present condition would improve, that mother had long history of substance abuse, and that her problems had resulted in several neglect petitions, culminating in permanent neglect findings against her and subsequent placement of her three other children.—*Matter of Naticia Q*, 599 N.Y.S.2d 759, 195 A.D.2d 616.—Infants 181.

N.Y.A.D. 4 Dept. 1935. Husband who did not abandon wife but who left her home involuntarily at her request, and whose subsequent overtures to effect reconciliation were futile, and who was not shown to have refused to provide for wife, held not barred from taking intestate share of estate of wife who died ten years after husband left her, on ground that under statute he "neglected" her. Decedent Estate Law, § 18; Civil Practice Act, § 1161.—*In re Sadowski's Estate*, 284 N.Y.S. 521, 246 A.D. 490.—*Des & Dist* 63.

N.Y.Child.Ct. 1949. A child is "neglected" so as to confer jurisdiction upon Children's Court to determine its custody, when his custodian, by reason of cruelty, mental incapacity, immorality or depravity, is unfit properly to care for child, or neglects or refuses to provide necessary medical, surgical or institutional or hospital care for child, or child is in such condition of want or suffering, or is under such improper guardianship or control, as to endanger his morals or health.—*In re Du Mond*, 92 N.Y.S.2d 805, 196 Misc. 16.—Infants 152.

N.Y.Child.Ct. 1949. Child was not, under the evidence, a "neglected" child so as to enable Children's Court to entertain mother's proceeding for custody of child in custody of its father.—*In re Du Mond*, 92 N.Y.S.2d 805, 196 Misc. 16.—Infants 179.

N.Y.Fam.Ct. 1992. Under neglect statute, which imposes strict liability, mother "neglected" children by failing to protect them from father's ongoing sexual abuse which mother was aware of, even if battered woman's syndrome rendered mother powerless to stop abuse. McKinney's Family Court Act § 1012(f)(i)(B).—*Matter of Glenn G.*, 587 N.Y.S.2d 464, 154 Misc.2d 677, affirmed *Matter of Josephine G.*, 630 N.Y.S.2d 348, 218 A.D.2d 656, leave to appeal denied 639 N.Y.S.2d 310, 87 N.Y.2d 803, 662 N.E.2d 791.—Infants 156.

N.Y.Dom.Rel.Ct. 1937. Domestic Relations Court of the City of New York held to have power to commit mentally defective infant to state institu-

tion for mentally defective infants, even without first obtaining parent's consent, pursuant to constitutional authority for establishment of courts for protection of "neglected" or "dependent" minors. Laws 1933, c. 482, § 2, subd. 19; § 85, as amended by Laws 1936, c. 346, § 5; and § 91; Const. art. 6, § 18.—*In re Jackson*, 293 N.Y.S. 19, 161 Misc. 702.—Infants 227.

N.C.App. 1988. Child may be both "dependent," and "neglected," within statutory definitions of dependent and neglected. G.S. § 7A-517(13, 21).—*In re Williamson*, 373 S.E.2d 317, 91 N.C.App. 668.—Infants 154.1.

N.C.App. 1983. Any child whose physical, mental or emotional condition has been impaired or is in danger of becoming impaired as result of failure of his or her parent to exercise that degree of care consistent with normative standards imposed upon parents of our society may be considered "neglected" under child neglect statute. G.S. § 7A-517(21).—*Matter of Thompson*, 306 S.E.2d 792, 64 N.C.App. 95.—Infants 156.

N.C.App. 1982. Where child had severe speech defect which could be treated by medical or other remedial care and she also had hearing defect, where facilities were available for her treatment and care without expense to her or her mother, where without treatment child would suffer serious and permanent harm, and where child's mother refused to permit her to receive care and treatment, child was "neglected" within meaning of statutory definition of "neglected juvenile." G.S. § 7A-517(21).—*In re Huber*, 291 S.E.2d 916, 57 N.C.App. 453, appeal dismissed, review denied 294 S.E.2d 223, 306 N.C. 557.—Infants 159.

Pa.Super. 1979. Husband who paid for all household expenses including food, rent, utilities, maid service, clothing, medical expenses, and insurance, and who paid bills from wife's accounts at two food stores, three restaurants, and three large department stores, was not neglecting to support his wife, who continued to live in the same residence with husband, in any way upon which Superior Court could grant relief; wife who received such assistance from husband plus additional income of approximately \$5,000 per year from her independent assets was not "neglected" so as to be entitled to an order of support. 18 P.S. § 4733 (Repealed).—*Com. ex rel. Goldstein v. Goldstein*, 413 A.2d 721, 271 Pa.Super. 389.—*Hus & W* 304.

Pa.Super. 1971. Where 16-year-old child, who lived with his mother, had had attacks of poliomyelitis which had resulted in various physical ailments, including a curvature of spine, and eminent surgeons recommended a spinal fusion as only way to preserve for child some chance of a normal life, but mother opposed blood transfusions which were necessary for such surgery, child was "neglected" under juvenile court law, and a guardian should be appointed to provide necessary medical or surgical care. 11 P.S. § 243 et seq., 243(5) (c), 250.—*In re Green*, 286 A.2d 681, 220 Pa.Super. 191, reversed and remanded 292 A.2d 387, 448 Pa. 338, 52

A.L.R.3d 1106, appeal after remand 307 A.2d 279, 452 Pa. 373.—Infants 159.

Tenn.Ct.App. 1994. Within statute providing that nursing home residents "must not be willfully abused or neglected" and providing for Type B civil monetary penalty for violation, word "willfully" modifies "neglected" as well as "abused," but with meaning appropriate to each word; "abuse" implies overt act or deed, which is presumed to be intentional unless shown to be inadvertent or accidental, and result of deed is presumed to be intentional unless shown otherwise, while "neglect" is failure to perform a deed, and neither the omission or its result is presumed to be intentional unless intent is shown or the circumstances are such as to imply intent. T.C.A. §§ 68-11-801, 68-11-803, 71-6-102.—Claiborne and Hughes Convalescent Center, Inc. v. State, Dept. of Health, 881 S.W.2d 671, appeal denied.—Health 276.

Tex.Civ.App.—El Paso 1961. If father provided his children who lived with him with proper home environment, proper parental care and guardianship, and proper scholastic education, children were not "dependent" or "neglected". Vernon's Ann. Civ.St. art. 2330.—Fitzgerald v. Neutze, 348 S.W.2d 677.—Infants 154.1.

Vt. 1971. Ten-month-old child, whose body evidenced bruises caused by her father's hitting her, and who sustained injury to her throat, necessitating emergency facilities of hospital, as result of improper feeding administered by her father, was without proper parental care and was "neglected." 33 V.S.A. § 656.—In re Neglected Child, 276 A.2d 14, 129 Vt. 234.—Infants 156.

W.Va. 1998. Record in proceedings to terminate mother's parental rights to her son, who was inflicted with human immunodeficiency virus (HIV), supported finding that child was "abused" and "neglected"; mother had experienced difficulties in properly administering child's medications, which were crucial to his health, she had at times forgotten to give him medicine and at least once administered wrong dosage, and she admitted to striking him with ruler and slapping and shaking him on other occasions. Code, 49-1-3(a)(1), (g)(1)(A).—In Interest of Micah Alyn R., 504 S.E.2d 635, 202 W.Va. 400.—Infants 179.

NEGLECTED AND ABUSED

Miss. 1990. Family court, in shelter hearing, properly found that siblings of child who had been sexually abused by their father were "neglected and abused" within meaning of Youth Court Act. Code 1972, § 43-23-3(h).—E.S. v. State, 567 So.2d 848.—Infants 156.

NEGLECTED AND IN FOSTER CARE

Minn. 1995. Child was "neglected and in foster care," and termination of mother's parental rights thus was appropriate; mother refused many if not most rehabilitative services offered, mother's visitation record was erratic, social worker said she refused mother's request for unsupervised visitation because of mother's threatening manner, and social

worker said that she could foresee no time when mother would provide proper parenting. M.S.A. §§ 260.015, subd. 18, 260.155, subd. 7, 260.221, subd. 1(b)(8).—Matter of Welfare of A.D., 535 N.W.2d 643.—Infants 156.

NEGLECTED CHILD

Ariz.App. 1965. Statutory terms "neglected child" and "dependent child" are mutually exclusive, former being generally applicable to situations where child's care is not proper because of some fault of parents or guardian, while latter applies to situation where lack of proper care is through no fault of parent or guardian. A.R.S. § 8-201.—Caruso v. Superior Court In and For Pima County, 406 P.2d 852, 2 Ariz.App. 134, vacated 412 P.2d 463, 100 Ariz. 167.—Infants 154.1.

Ga.App. 1961. A child may be "neglected child" within statute proscribing contributing to conditions rendering child delinquent or neglected either when it is not provided with necessities or where by reason of parents' improvidence and neglect it is placed in unfit surroundings or exposed to unfit, immoral and depraved influences, not conducive to its health, morals or well-being. Code, § 26-6802.—Walker v. State, 122 S.E.2d 486, 104 Ga.App. 595.—Infants 13.

Ill. 1952. A child, whose parents refused to permit a blood transfusion when lack of transfusion meant that child would almost certainly die or at best would be mentally impaired for life, was a "neglected child" within statutory definition; and fact that parents had not otherwise failed in their duty to such child would be immaterial to question as to court's right to appoint guardian for such child. S.H.A. ch. 23, § 2001 et seq.; U.S.C.A.Const. Amend. 14; S.H.A.Const. art. 2, § 3.—People ex rel. Wallace v. Labrenz, 104 N.E.2d 769, 411 Ill. 618, 30 A.L.R.2d 1132, certiorari denied 73 S.Ct. 24, 344 U.S. 824, 97 L.Ed. 642.—Infants 205.

Ill.App. 1 Dist. 1971. Evidence that 17-year-old girl, who gave birth to illegitimate child, made arrangements with head maternity nurse to leave child in hospital until May 21 when girl was to be released from institution, and that on May 20 Department of Children and Family Services filed neglect petition, and that two social workers with only limited contact with girl did not believe her to be fit to raise child did not justify circuit court finding that child was a "neglected child" under terms of Juvenile Court Act and should be placed under guardianship. S.H.A. ch. 37, §§ 703-1, 703-5, 704-2.—In re Nyce, 268 N.E.2d 233, 131 Ill.App.2d 481.—Infants 179.

Ind.App. 2 Div. 1919. A child who has been abandoned by its parents, and who has been taken by grandparents into their home and treated with great affection as a member of the family, cannot be said to be a "neglected child," within the meaning of Burns' Ann.St.1914, § 1643 (Burns' Ann.St. § 9-2807), defining a neglected child to be one who has not proper parental care or guardianship.—Orr

v. State, 123 N.E. 470, 70 Ind.App. 242.—Adop 7.4(1); Infants 157.

Ind.App. 2 Div. 1913. Burns' Ann.St.1908, § 1643 (Burns' Ann.St. § 9-2807), defines a "neglected child" as any boy under 16 years of age or girl under 17 years of age, who has not proper parental care, or is found living in a house of ill fame, or with any vicious or disreputable persons, or whose home, by reason of depravity of its parent, is an unfit place for the child. After accused's husband went to another town to work, she began to visit wine rooms until late at night, and brought a man home with her, on a number of occasions, and had sexual intercourse with him for hire until a late hour in a room near where her young children were, and on one occasion had intercourse with a man while another man had intercourse with her 17 year old daughter in the same room, thus practically making her apartments a house of prostitution. Held, that accused's children were "neglected," within the statute, and she was liable thereunder for contributing to their neglect by virtually requiring them to live in a disreputable house.—Nunn v. State, 103 N.E. 439, 55 Ind.App. 37.—Child S 663; Infants 179.

Ind.App. 2 Div. 1912. Laws 1907, c. 41, § 1, Burns' Ann.St. 1908, § 1642, defines a "dependent child" as one under the age stated who is dependent upon the public for support, or who is destitute, homeless, or abandoned, and section 2, Burns' Ann.St.1908, § 1643, defines a "neglected child" as one who has not proper parental care or guardianship. Held, that children were neither "dependent" nor "neglected," so as to charge their father for contributing to their neglect under the statute, where their mother, after unsuccessfully attempting to procure a divorce, had taken them to her sister's and refused to bring them to the home which the father offered to furnish on condition that she return to it.—Wheeler v. State, 100 N.E. 25, 51 Ind.App. 622.

Iowa 1959. Where a child's mother was dead, and her father left the state and went to another state without advising the child's grandparents who had possession of the child as to his leaving or as to his address, the child became one without parental care as far as the father was concerned, and became a dependent or a "neglected child." I.C.A. § 232.2.—State ex rel. Gering v. Bird, 96 N.W.2d 100, 250 Iowa 730.—Infants 157.

Iowa 1958. Any child living under conditions which shock chancellor's conscience may be classified as a "dependent child" or "neglected child" within broad statutory definition. I.C.A. § 232.2(7).—State v. Visser, 88 N.W.2d 925, 249 Iowa 763.—Infants 154.1.

Iowa 1955. Minor child who had resided with her aunt and uncle and received excellent care from them for about five years during which time mother contributed only about \$200 to her support, did not have proper care by her natural parents and was a "neglected child" within statute providing for care of neglected children. I.C.A. §§ 232.2, 232.39.—

McKay v. Ruffcorn, 73 N.W.2d 78, 247 Iowa 195.—Infants 156.

La. 1949. Where child after mother's death had been in custody of maternal grandmother until grandmother's death and there then remained no person charged with legal obligation for caring for child but father and he had failed to provide for child in past, juvenile court had jurisdiction to determine custody of child on ground that it was a "neglected child".—State v. Traylor, 43 So.2d 469, 216 La. 193.—Infants 158.

La. 1947. Evidence that at physician's office mother spanked 3½-month-infant until its buttocks were red was insufficient to find the infant a "neglected child" so as to warrant depriving mother of custody of infant and placing infant in an asylum, in view of overwhelming testimony that mother had always properly cared for infant except on the one occasion. Act No. 169 of 1944, § 4, subd. 9(a).—In re Diaz, 33 So.2d 201, 212 La. 700.—Infants 156.

La. 1944. It is only when child is found living in a house of ill fame or with any vicious or disreputable persons or whose home, because of neglect, immorality, or depravity of its parents, guardian, or other person in whose care child may be, is an unfit place for such child, that child is a "neglected child" within statute relating to custody of neglected children. Act No. 30 of 1924, §§ 1, 6, 7, 9, 11; Const.1921, art. 7, § 52.—In re Sherrill, 19 So.2d 203, 206 La. 457.—Infants 154.1.

La. 1944. The infant child of parties to separation proceeding could not be deemed to be a "neglected child" within statute and juvenile court did not have jurisdiction as to its custody where affidavit of child's paternal grandmother charging child with being a neglected child characterized such grandmother as a woman of means and having a good home and when affidavit was filed child was in custody of affiant. Act No. 30 of 1924, §§ 1, 6, 7, 9, 11; Const.1921, art. 7, § 52.—In re Sherrill, 19 So.2d 203, 206 La. 457.—Infants 156.

La. 1942. Where charge was made that three-year-old child was without proper parental care, that her parents were separated, and that her mother was a drunkard and had left state with paramour, the child was charged with being a "neglected child" within statute relating to proceedings against neglected children and juvenile court had jurisdiction to determine the issue even though the mother had previously been granted temporary custody of the child in separation from bed and board proceedings pending in the Civil District Court. Act No. 126 of 1921, Ex.Sess., § 3.—State v. Tomasella, 7 So.2d 615, 200 La. 60.—Courts 472.1.

La.App. 2 Cir. 1977. Evidence of unsanitary and unwholesome living conditions in the family home, that four-year-old child was beaten severely by his step-father, that the step-father frequently struck or kicked the children when angry, and that the children's mother and the step-father subjected the children to the viewing of sexual activity in the home on frequent occasions was sufficient to sustain finding that each of the children was a "ne-

glected child.”—In re State in Interest of Young, 342 So.2d 1205.—Infants 179.

Minn. 1950. An abandoned child and a child in an unfit place for him by reason of his parents' improvidence or neglect are both termed a “neglected child”, within social welfare statutes. M.S.A. §§ 260.01, 617.55.—In re Kowalke's Guardianship, 46 N.W.2d 275, 232 Minn. 292.—Infants 156, 157.

Miss. 1968. Youth court did not have jurisdiction to award custody of minor child to maternal aunt on basis that she was “neglected child” where petition stated that aunt had custody of and was caring for child and that child was receiving psychiatric treatment needed. Code 1942, §§ 7185–02(h), 7185–03.—Griffin v. Bell, 215 So.2d 573.—Child C 578.

Mo. 1942. Recitals in juvenile court's finding, upon which it based judgment committing minor child to charitable organization, that child was neglected by his parents, who failed to provide properly for him, as alleged in probation officer's petition, meant that parents had failed to provide for child in such manner and to such extent as to make him a “neglected child” within statute, that is destitute or dependent on public for support, so as to give juvenile court jurisdiction of cause though restrictive averments could not be supplied by “intendment” if such court's finding were broader than statute. R.S.1939, § 9673 et seq. (V.A.M.S. § 211.010 et seq.)—Label v. Sullivan, 165 S.W.2d 639, 350 Mo. 286.—Infants 221.

Mo.App. 1950. In order to authorize finding that infant is a “neglected child” within meaning of statute, court must find such facts as will make the child destitute, or homeless or abandoned or dependent upon the public for support, the conditions specified in statute defining a neglected child, and nothing can be added by intendment. R.S.1939, § 9673 (V.A.M.S. § 211.010).—State v. Hyman, 230 S.W.2d 504.—Infants 210.

Mo.App. 1950. Findings that children alleged to be neglected children within meaning of statute had been left alone by their parents, that parents had failed to keep children clean and properly fed and clothed, that parents had not provided a proper home, that parents had not properly cared for the children and allowed them to contract skin diseases and failed to furnish medical attention, and that parents had fought and beaten each other continuously for more than a year, were sufficient to comply with restrictive definition of a “neglected child” under statute. R.S.1939, § 9673 (V.A.M.S. § 211.010).—State v. Hyman, 230 S.W.2d 504.—Infants 210.

Mont. 1980. District court's conclusion that child was “neglected child” within meaning of statute providing that commission of any act which materially affects normal physical or emotional development of youth constitutes neglect, was supported by clear and convincing evidence that child's physical condition deteriorated while in care of natural mother but improved dramatically while in foster care, and by testimony of physician, nurses,

and Welfare Department personnel that child was failing to thrive while in care of natural mother; therefore, district court was justified in permanently depriving natural mother of child. MCA 41–3–102(2)(a), 41–3–406(1)(b)(ii).—Matter of M. R. L., 608 P.2d 134, 186 Mont. 468.—Infants 179.

Mont. 1966. “Neglected child” is broader term than “dependent child”; former describes parental failure to exercise degree of care demanded by family circumstances and concerns disregard of parental duty whether intentional or unintentional, while latter refers to child who must be supported by others than its natural or legal guardians. R.C.M.1947, § 10–501.—In re Vikse, 413 P.2d 876, 147 Mont. 417.—Infants 154.1.

Neb. 1972. A “neglected child” is a child under 18 years of age who is abandoned by his parent, who lacks proper parental care by reason of the fault or habits of the parent, or whose parent neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals or well-being of such child. R.R.S.1943, § 43–201.—In re Hartman, 199 N.W.2d 26, 188 Neb. 682.—Infants 156.

Neb. 1972. A “neglected child” is a child under 18 years of age who is abandoned by his parents, who lacks proper parental care by reason of fault or habits of parent, or whose parent neglects or refuses to provide proper or necessary subsistence, education or other care necessities for health, morals, or well-being of such child.—In re Johnson, 198 N.W.2d 466, 188 Neb. 677.—Infants 156.

Neb. 1967. A “neglected child” is child under 18 years of age who was abandoned by his parent, who lacks proper parental care by reason of fault or habits of parent, or whose parent neglects or refuses to provide proper necessary subsistence, education, or other care necessary for health, morals, or well-being of such child. R.R.S.1943, § 43–201 et seq.—In Interests of Owen, 153 N.W.2d 361, 182 Neb. 132.—Infants 156.

N.H. 1996. Each subparagraph of statute defining “neglected child” is independently a definition of “neglected child” and thus, if trial court properly finds that petitioner has proven the requirements of any one of these definitions, appellate court will sustain a finding of neglect. RSA 169–C:3, subd. 19.—In re Thomas M., 676 A.2d 113, 141 N.H. 55.—Infants 156, 252.

N.H. 1941. The jurisdiction of juvenile court is limited to neglected and delinquent children, a “neglected child” being one who is abandoned by his parents, who habitually begs or receives alms, who is found in any disreputable place, who associates with vicious or disreputable persons, who engages in an occupation or is in such surroundings as may prove injurious to child's physical, mental, or moral well-being, or whose home is unfit because of neglect, cruelty, or depravity of his parents, or the failure of his parents to provide proper subsistence, education, medical or surgical care, or other care necessary for child's health, morals or well-being.—State v. Lefebvre, 20 A.2d 185, 91 N.H. 382.—Infants 154.1.

N.M.App. 1996. "Neglected child" includes child who has been abandoned by child's parent, who is without proper parental care necessary for child's well being due to faults or habits of child's parent, or whose parent is unable to discharge his responsibilities to and for child because of incarceration. NMSA 1978, § 32A-4-2, subd. C(1, 2, 4).—State ex rel. Children, Youth and Families Dept. v. Joe R., 923 P.2d 1169, 122 N.M. 284, 1996-NMCA-091, certiorari granted State ex rel. Children, Youth and Families Dept. in Matter of Sara R., 919 P.2d 409, 122 N.M. 1, reversed 945 P.2d 76, 123 N.M. 711, 1997-NMSC-038.—Infants 156, 157.

N.M.App. 1982. "Neglected child" means child who has been abandoned by parent who, by reason of incarceration, is unable to discharge his responsibilities to and for child; thus, trial court properly terminated parental rights of father who was incarcerated for murder of child's mother on basis of neglect, notwithstanding that petition to terminate parental rights proceeded on statutory basis of abandonment. NMSA 1978, §§ 32-1-3, 32-1-3, subd. L, 40-7-4, subds. B, B(3, 4), E(2), F.—Matter of Adoption of Doe, 657 P.2d 134, 99 N.M. 278, certiorari denied In Matter of Adoption of Doe, 658 P.2d 433, 99 N.M. 358.—Infants 156.

N.Y.A.D. 1 Dept. 1997. Doctor's testimony that mother was extremely irritable and hostile toward her child whom she had brought to hospital for examination, that mother called child "bitch" and said that child "had the devil in her," that mother said three times that she had weapon on her and made "specific threats" toward doctor and other hospital staff, and that mother said it was "miracle" she had not killed the child established that child was "neglected child" whose well-being was at imminent risk due to mother's failure to exercise minimum care in providing proper supervision or guardianship. McKinney's Family Court Act § 1012(f)(i)(B).—Matter of Jessica R., 657 N.Y.S.2d 164, 230 A.D.2d 108.—Infants 179.

N.Y.A.D. 1 Dept. 1970. While there was ample support for finding that 15-year-old boy habitually absented himself from Children's Center, such conduct did not warrant a finding that the boy was habitually disobedient or ungovernable, particularly in view of the fact that, in each instance, the boy went back to his mother's house because she had failed to visit him in the Center and feelings of neglect and rejection became unbearable; on the other hand, a careful review of the record indicated that the boy was a "neglected child" rather than "a person in need of supervision" as defined in Family Court Act. Family Ct. Act, § 732.—In re Lloyd, 308 N.Y.S.2d 419, 33 A.D.2d 385.—Infants 175.1.

N.Y.A.D. 2 Dept. 1995. Child whose father inflicted excessive corporal punishment which resulted in bruises and laceration to his buttocks and buckle-shaped bruise on his back was a "neglected child." McKinney's Family Court Act § 1012(f)(i)(B).—Matter of Suffolk County, Dept. of Social Services, 626 N.Y.S.2d 522, 215 A.D.2d 486.—Infants 156.

N.Y.A.D. 2 Dept. 1938. A child is not to be deemed a "neglected child" within Children's Court Act merely upon a showing that some one other than the present custodian has a paramount right to the child's custody, as respects jurisdiction of Children's Court. Laws 1922, c. 547, § 2, subd. 4.—Caposella v. Leonardo, 7 N.Y.S.2d 606, 255 A.D. 863, reargument denied In re Caposella, 8 N.Y.S.2d 509, 255 A.D. 987.—Infants 156, 196.

N.Y.A.D. 3 Dept. 1978. Expert psychiatric testimony which established by clear and convincing evidence that mother suffered from chronic undifferentiated schizophrenia and that, as result of such mental illness, she was unable and would likely remain unable to properly care for her children justified finding that the mother's infant son was a "neglected child" within the meaning of the Family Court Act and warranted the termination of parental custody rights with respect to a second child. Family Ct. Act, § 1012(f).—Department of Social Services, St. Lawrence County v. Joan R., 403 N.Y.S.2d 368, 61 A.D.2d 1108.—Infants 181.

N.Y.A.D. 3 Dept. 1971. Fifteen-year-old boy was a "neglected child" within meaning of Family Court Act in view of refusal of his mother, a Jehovah's Witness, to give her consent to blood transfusions essential for safety of surgical procedure necessary to insure physical, mental and emotional well-being of her son, who was a victim of Von Recklinghausen's disease.—In re Sampson, 323 N.Y.S.2d 253, 37 A.D.2d 668, appeal denied 325 N.Y.S.2d 1026, 29 N.Y.2d 486, 275 N.E.2d 339, appeal denied 326 N.Y.S.2d 398, 29 N.Y.2d 745, 276 N.E.2d 233, stay granted 29 N.Y.2d 750, affirmed 328 N.Y.S.2d 686, 29 N.Y.2d 900, 278 N.E.2d 918.—Infants 159.

N.Y.Sup. 1976. Isolated incident wherein mother left two children, aged one and two years, unattended for approximately one-half hour while she went to nearby supermarket did not constitute "neglect" of children under the Family Court Act and, thus, under definition in Social Services Law of "maltreated child" as including a child under 18 years of age that is defined as a "neglected child" under the Family Court Act, finding of county commissioner of department of social services that mother's two children had been maltreated could not be sustained, and report of maltreatment in Central Register would be expunged. Family Ct. Act, § 1012(f); Social Services Law §§ 412, subds. 2, 6, 422, subds. 5, 8.—Augustine v. Berger, 388 N.Y.S.2d 537, 88 Misc.2d 487.—Infants 157.

N.Y.Child.Ct. 1958. A child was a "neglected child" and properly remanded to the temporary custody of the Commission of Public Welfare although she was a patient in a state hospital getting good care and medical attention where she was not a resident of the hospital nor did she live there within meaning of the statutory definitions. Children's Court Act, § 2, subd. 4.—In re Moran, 179 N.Y.S.2d 830, 14 Misc.2d 630.—Infants 156.

N.Y.Child.Ct. 1946. An infant born out of wedlock who was placed by the mother with another woman who subsequently placed the infant with

petitioners was a "neglected child" and "without proper guardianship" within the meaning of the Children's Court Act so as to permit the consent of the mother who caused the child to be neglected, to be dispensed with in adoption proceedings. Children's Court Act, § 2, subd. 4; Social Welfare Law, § 374; Domestic Relations Law, §§ 111, 112.—In re Anderson, 65 N.Y.S.2d 169, 187 Misc. 740.—Adop 7.4(1).

N.Y.Child.Ct. 1946. Under the section of the Children's Court Act defining the term "neglected child", the phrase "without proper guardianship" as used in the Act means some condition other than unfitness or cruelty, mental incapacity, immorality or depravity. Children's Court Act, § 2, subd. 4.—In re Anderson, 65 N.Y.S.2d 169, 187 Misc. 740.—Infants 156.

N.Y.Child.Ct. 1938. Whether a child is a "neglected child," within meaning of the Children's Court Act, is a fact question. Unconsol.Laws, § 372.—In re Richards, 2 N.Y.S.2d 608, 166 Misc. 359, affirmed 7 N.Y.S.2d 722, 255 A.D. 922.—Infants 209.

N.Y.Child.Ct. 1938. An eight year old girl was not a "neglected child," within meaning of the Children's Court Act, because of the fact that her mother did not send her to school, where refusal was not prompted by any spirit of defiance or willfulness, but rather from a conviction that it would not be safe or conducive to child's health, in view of conditions under which child would be obliged to travel from home to attend school, and where mother taught child at home as well as she could. Unconsol.Laws, § 372; Education Law, § 627, subd. B, par. 2, § 641; Const. art. 6, § 18.—In re Richards, 2 N.Y.S.2d 608, 166 Misc. 359, affirmed 7 N.Y.S.2d 722, 255 A.D. 922.—Infants 156.

N.Y.Child.Ct. 1933. To make child "neglected child" within Children's Court Act, child need not be in dire want or liable to become public charge. Laws 1922, c. 547, § 5 and § 2, subd. 4, as amended by Laws 1930, c. 393, § 6 and § 2, subd. 4.—Sanderson v. Sanderson, 267 N.Y.S. 410, 149 Misc. 88.—Infants 156.

N.Y.Child.Ct. 1933. In proceeding to compel divorced father to support child, evidence held to establish that child was a "neglected child". Laws 1922, c. 547, § 5 and § 2, subd. 4, as amended by Laws 1930, c. 393, § 6 and § 2, subd. 4.—Sanderson v. Sanderson, 267 N.Y.S. 410, 149 Misc. 88.—Child S 200.

N.Y.Fam.Ct. 1992. Parent's knowing failure to have child vaccinated against measles in midst of measles outbreak or epidemic caused child to be "neglected child" within meaning of Family Court Act; such inaction placed child's physical condition in imminent danger of becoming impaired. McKinney's Family Court Act § 1012(f).—Matter of Christine M., 595 N.Y.S.2d 606, 157 Misc.2d 4.—Infants 159.

N.Y.Fam.Ct. 1991. Physician's testimony established that mother's actions in repeatedly filing

unfounded reports of sexual abuse by father created substantial risk that child's mental and emotional condition would become impaired and, thus, child was a "neglected child" within meaning of Family Court Act. McKinney's Family Court Act § 1011 et seq.—Matter of Jessica G., 573 N.Y.S.2d 251, 151 Misc.2d 694.—Infants 156.

N.Y.Fam.Ct. 1985. Definition of a "neglected child" involves a two-fold analysis: first, status of child must be established as less than 18 years of age, and either an actual impairment of a physical, mental or emotional condition, or proof of imminent danger of impairment must be shown, and second, proof of some omission or failure, on part of parent, to exercise minimum degree of care is required.—Matter of Smith, 492 N.Y.S.2d 331, 128 Misc.2d 976.—Infants 156.

N.Y.Fam.Ct. 1966. Evidence established that child, whose body and arms were covered with bruises, who had deep abrasion on bridge of nose, deep scalp laceration, and broken arm sustained within period of less than two months, was a "neglected child" within meaning of Family Court Act. Penal Law, § 483-d; Family Ct. Act, §§ 312, 344, 346.—In re Young, 270 N.Y.S.2d 250, 50 Misc.2d 271.—Infants 179.

N.Y.Fam.Ct. 1963. That child was withdrawn from school by parent for the period including Wednesday P.M. and Thursday A.M. weekly for observance of his sabbath and religious instruction was no defense to charge of neglect, and the boy was a "neglected child" within the Family Court Act. Family Court Act, §§ 312, 331; Education Law, § 3204 et seq.; U.S.C.A.Const. Amends. 1, 14.—In re Currence, 248 N.Y.S.2d 251, 42 Misc.2d 418.—Infants 159.

N.Y.Fam.Ct. 1962. For purpose of Family Court Act provision defining a "neglected child" as one suffering or likely to suffer serious harm from improper guardianship, including lack of "moral supervision or guidance," courts will continue to insist upon high level or moral conduct on part of custodians of children and will not condone conduct of parents who, tired of each other's company, may be free to seek other companionship with complete disregard of moral examples they are setting for their children. Family Court Act, §§ 311 et seq., 312.—In re Anonymous, 238 N.Y.S.2d 422, 37 Misc.2d 411.—Infants 156.

N.Y.Dom.Rel.Ct. 1942. Where, after father's divorce, he established new home with another woman without any attempt to comply with state marriage laws, although union had a rabbinical sanctification, to which home he brought child from home of child's maternal cousin, and child was made to feel she was unwanted, and father urged that child be committed to institution, notwithstanding that while child lived with cousin she had exemplary record, child was a "neglected child" and her custody would be awarded to the maternal cousin. Domestic Relations Court Act § 61, subd. 1.—In re Schwartz, 35 N.Y.S.2d 930.—Infants 156, 226.

Ohio 1956. Where mother of minor children was confined in a state hospital because of mental illness, and during her confinement she had no funds with which to support the children and was unaware of their whereabouts, she was not guilty of "willful neglect" of the children, and the children did not come within statutory definition of a "neglected child" whose custody could be awarded to Child Welfare Board. R.C. §§ 2151.01 et seq., 2151.03(a-c), 2151.27, 2151.52.—*In re Masters*, 137 N.E.2d 752, 165 Ohio St. 503, 60 O.O. 474.—*Infants* 156.

Ohio 1950. Where father of minor child endeavored to send child to proper public school but, pursuant to valid regulation of Board of Education, child was excluded from that public school because child had not been vaccinated, and there was no showing father had done anything to prevent vaccination, child was not a "neglected child" within statutory definition of a neglected child. Gen. Code, §§ 1639-3, 1639-45.—*State v. Dunham*, 93 N.E.2d 286, 154 Ohio St. 63, 42 O.O. 133.—*Infants* 13.

Okl. 1952. Where a child of seven years was placed in the care and custody of a married couple by the court and during four years of their custody the father visited his child five or six times and contributed \$10 in four years, child was a "dependent child" and a "neglected child" within meaning of statute for want of proper parental care or guardianship, notwithstanding fact that child was in proper care in the home of the married couple and therefore was not destitute and abandoned in fact. 10 Okl.St. Ann. § 101.—*In re Davis*, 244 P.2d 555, 206 Okla. 405, 1952 OK 186.—*Infants* 154.1.

Okl. 1941. Where divorced mother of 18-months-old child placed it in the care and custody of a married couple, agreeing to pay them so much per week for its support, and the mother paid the sum agreed on for approximately eight months, but paid no more thereafter, and the child lived in the home of the married couple for more than five and one-half years and received proper care in every respect, and thereafter the mother threatened to take the child away, evidence supported jury's finding that the child was a "dependent child" and a "neglected child" within meaning of statute for want of proper parental care, or guardianship within meaning of statute. 10 Okl.St. Ann. § 101.—*In re Reed*, 117 P.2d 503, 189 Okla. 389, 1941 OK 295.—*Infants* 177.

Pa.Super. 1940. A nine-year-old boy, who was refused admittance to school because his father refused to have him vaccinated as required by statute, although it was not shown that the boy was unfit for vaccination, was a "neglected child" defined by the Juvenile Court Law as a child whose parents neglect or refuse to provide proper or necessary subsistence, education, medical, or surgical care, and his custody was properly awarded to the county child welfare service subject to supervision of a probation officer, notwithstanding father instructed the boy to go to school. 11 P.S. § 243; 24 P.S. § 1421; 53 P.S. § 2181.—*In re Marsh*, 14 A.2d 368, 140 Pa.Super. 472.—*Infants* 154.1.

Tex.Civ.App.—Amarillo 1938. Where parents of twelve year old child were divorced, father had custody of child and arranged and paid for her to live in a private home and attend public school, and child attended Sunday School and church with her father and people with whom she lived, child was not "a dependent child" or "neglected child" within statute, so as to justify depriving father of her custody. Vernon's Ann.Civ.St. art. 2330.—*Reynolds v. Rayborn*, 116 S.W.2d 836.—*Infants* 154.1.

Utah App. 1999. Finding that child was a "neglected child" was supported by evidence that mother knew that father's violence toward mother had harmed child in the past, that mother knew that there was great potential for future harm, and that mother had voluntarily returned to abusive relationship with father between protective orders, thus potentially subjecting child to witness or be the victim of further abuse. U.C.A.1953, 78-3a-103(1)(r)(i)(A, B).—*State In Interest of C.B.*, 989 P.2d 76, 1999 UT App 293.—*Infants* 179.

W.Va. 1997. Failure on the part of a parent to properly manage his or her finances does not constitute a "lack of financial means" within meaning of statute that excludes from the definition of a "neglected child" a child who is deprived of certain necessities due to a lack of financial means. Code, 49-1-3(g)(1)(A).—*State v. Julie G.*, 500 S.E.2d 877, 201 W.Va. 764.—*Infants* 156.

NEGLECTED CHILDREN

La. 1947. Seven year old twin girls who lived with mother first in home of paternal grandmother and then in home of maternal grandmother, and who received all care required for their health and comfort, and whose environment was refined, were not "neglected children" whose custody would be awarded to paternal grandmother, notwithstanding that mother was allegedly an immoral person, where acts of asserted immorality were not committed in the home and the children did not come in contact with the alleged disgraceful conduct. Act No. 30 of 1924, § 9.—*In re Knight*, 31 So.2d 825, 212 La. 357.—*Infants* 158.

La. 1907. The words "neglected children," as used in Act No. 82, p. 134, of 1906, entitled "An act defining the power of the district courts of this state and the city courts, with reference to the care, treatment, and control of dependent, neglected, incorrigible, and delinquent children, under the age of 16 years," mean any children who are destitute, homeless, abandoned, or depending on the public for support, or who have not proper care or guardianship.—*In re Parker*, 43 So. 54, 118 La. 471.

La.App. 1 Cir. 1987. Evidence established that infants of one and one-half years of age were "children in need of care" and "neglected children" to be placed in custody of Department of Health and Human Resources due in part to lack of personal cleanliness, lack of cleanliness in home, and risk in mother's custody. LSA-R.S. 14:403, 14:403, subd. B(4); LSA-C.J.P. art. 13(14), (14)(b).—*State in Interest of Rudolph*, 506 So.2d 706, writ denied

508 So.2d 74, reconsideration not considered 511 So.2d 1146.—Infants 177.

Neb. 1971. Evidence sustained finding that six and nine-year-old children, who had been whipped by their stepfather with a dog leash, causing one child to become unconscious, who had lived in environment of violence, neglect and continual marital discord and who had been permitted to become hungry and filthy on occasions, were "neglected children" within statute, and justified transfer of custody from mother to natural father. R.R.S.1943, § 43-201(3).—In re Furrow, 187 N.W.2d 586, 187 Neb. 64.—Infants 179.

N.H. 1941. Children 10, 12, and 15 years of age, who were suspended from public school for their refusal to salute the flag on account of good-faith conscientious objections thereto based upon teachings of religious sect known as Jehovah's Witnesses, and who because of parents' poverty were not provided satisfactory private schooling, were not "neglected children", subject under statute to being removed from custody of parents and confined in an institution. Pub.Laws 1926, c. 110, §§ 1-4, 9, 10, 13, as amended by Laws 1937, c. 152; Const. pt. 2, art. 83.—State v. Lefebvre, 20 A.2d 185, 91 N.H. 382.—Infants 159.

N.Y.Child.Ct. 1934. Children made public charges through refusal of their father to comply with regulation of welfare officer requiring father's surrender of automobile license plates as condition to obtaining public work held "neglected children" within Children's Court Act. Laws 1930, c. 393, § 2, subd. 4.—In re Kinney, 272 N.Y.S. 520, 151 Misc. 769.—Infants 156.

N.Y.Fam.Ct. 1967. Where four children were not being adequately supplied with education due to refusal of parents to cause them to be immunized against poliomyelitis and thus able to attend school, children were "neglected children" within Family Court Act. Public Health Law, § 2164; Family Ct. Act, § 311 et seq.—In re Elwell, 284 N.Y.S.2d 924, 55 Misc.2d 252.—Infants 159.

N.C.App. 1976. Where parents of 13-year-old and 10-year-old children refused to permit such children to attend public schools because those schools did not teach Indian heritage and culture, and parents did not provide any sufficient alternative education or training for the children, such children were "neglected children," within meaning of statute governing court's juvenile jurisdiction. G.S. § 7A-278(4).—Matter of McMillan, 226 S.E.2d 693, 30 N.C.App. 235.—Infants 159.

NEGLECTED HIS DUTY

Ga.App. 1992. Former wife failed to establish that sheriff "neglected his duty" in failing to arrest former husband, pursuant to court order, for failure to pay child support, and thus, sheriff could not be held in contempt; deputies tried to ascertain former husband's place of residence, searched for him at his mother's house and were told that he did not live there, and tried to find him at various places of employment. O.C.G.A. §§ 15-13-2(2),

15-16-10.—In re Smith, 424 S.E.2d 45, 205 Ga. App. 857, certiorari denied.—Contempt 10.

NEGLECTED JUVENILE

N.C.App. 1982. Where child had severe speech defect which could be treated by medical or other remedial care and she also had hearing defect, where facilities were available for her treatment and care without expense to her or her mother, where without treatment child would suffer serious and permanent harm, and where child's mother refused to permit her to receive care and treatment, child was "neglected" within meaning of statutory definition of "neglected juvenile." G.S. § 7A-517(21).—In re Huber, 291 S.E.2d 916, 57 N.C.App. 453, appeal dismissed, review denied 294 S.E.2d 223, 306 N.C. 557.—Infants 159.

NEGLECTED MINOR

N.Y.A.D. 3 Dept. 1926. Under Const. art. 6, § 18, as amended in 1921, Penal Law, § 482, subd. 1, and Laws 1924, c. 436, amending Laws 1922, c. 547, § 5, subd. 4, Children's Court has no jurisdiction to punish a father for neglecting to furnish food, clothing, shelter, and medical attendance to his children under the age of 16, in absence of allegation in indictment or proof that children are delinquent or neglected; "neglected minor" being one suffering from neglect and in state of want.—People v. De Pue, 217 N.Y.S. 205, 217 A.D. 321.—Child S 655.

NEGLECTED OR DELINQUENT CHILD

Ark. 1923. A ten year old girl placed in an orphans' asylum by its mother under agreement to pay its board, and given to childless parents, from whom the mother made repeated attempts to retake it, culminating in court actions by both parties, is not a "neglected or delinquent child" within the statute conferring jurisdiction on the juvenile court to award custody over neglected or delinquent children.—Scott v. Brown, 254 S.W. 1074, 160 Ark. 489.—Infants 151.

NEGLECTED TO ALLOW THE CLAIM

Tex.Civ.App.—Beaumont 1932. Court's failure to act within reasonable time on claim against county filed with court before institution of suit thereon entitles claimant to sue because court has "neglected to allow the claim". Vernon's Ann.Civ. St. art. 1573.—Shelby County v. Caldwell, 48 S.W.2d 761.—Counties 213.

NEGLECTED TO DO BOTH

Mo.App. 1926. Instruction that state law required either that bell be rung or that whistle be sounded by train approaching crossing, and that failure to do "one or the other" violated law, held not to require both bell and whistle to be sounded, though it also stated that failure to ring bell or sound whistle violated railroad's duty, and though neglected to do "one or the other" does not mean "neglected to do both."—Malone v. St. Louis-San Francisco Ry. Co., 285 S.W. 123, 220 Mo.App. 9.

NEGLECTED TO REFUSE TO COMPLY

Cal.App. 1 Dist. 1949. Finding in contempt proceeding that husband "neglected to refuse to comply" with orders requiring him to pay money for support of wife, would be strictly construed in husband's favor in habeas corpus proceeding to secure his release from imprisonment.—*Ex parte Diggs*, 202 P.2d 1039, 90 Cal.App.2d 451.—*Hab Corp* 529.

Cal.App. 1 Dist. 1949. Finding in contempt proceeding that husband "neglected to refuse to comply" with orders of court requiring him to make payments for support of wife, was insufficient to support judgment that husband be imprisoned until he complied with orders, or until such further time as court might order, since "neglected to refuse to comply" was equivalent of a statement that he did not refuse to comply.—*Ex parte Diggs*, 202 P.2d 1039, 90 Cal.App.2d 451.—*Divorce* 269(12).

NEGLECTFUL

Kan. 1933. In broad sense, "reckless" may be used as synonymous with "careless," "heedless," "inattentive," "inattentive to duty," "indifferent," "neglectful," or "negligent," or as implying carelessness, heedlessness, indifference, mere inattention to duty, negligence, thoughtlessness, or want of care.—*Stout v. Gallemore*, 26 P.2d 573, 138 Kan. 385.

NEGLECTFUL CONDUCT

Ill.App. 4 Dist. 2001. One way to measure "neglectful conduct" under section of the Adoption Act permitting termination of parental rights for substantial neglect in a continuous or repeated fashion is to consider whether the alleged acts of neglect were so severe that giving the offending parent an opportunity to remediate them would be unconscionable. S.H.A. 750 ILCS 50/1(D)(d).—*In re D.F.*, 254 Ill.Dec. 825, 748 N.E.2d 271, 321 Ill.App.3d 211, appeal allowed 258 Ill.Dec. 94, 755 N.E.2d 477, 195 Ill.2d 579, affirmed in part, vacated in part, reversed in part 268 Ill.Dec. 7, 777 N.E.2d 930, 201 Ill.2d 476.—*Infants* 156.

NEGLECT OF A CHILD

Ohio 1957. To constitute an "abandonment of a child", there must be a wilful leaving of a child by his parent with an intention to cause perpetual separation, and to constitute "neglect of a child" there must be a wilful or indifferent disregard of the duty owed by a parent to his child. R.C. § 2151.03.—*In re Kronjaeger*, 140 N.E.2d 773, 166 Ohio St. 172, 1 O.O.2d 459.—*Infants* 157.

NEGLECT OF A LEGAL DUTY

Cal. 1978. Alleged failure of customer to exercise care in examining its bank statements was not sufficient basis for denying it equitable relief from bank on theory that customer issued checks in mistaken belief that it owed bank amounts for which checks were drawn, as failure to exercise care in examining bank statements was not the "neglect of a legal duty" for purposes of Civil Code section

defining a "mistake of fact" as a mistake "not caused by the neglect of a legal duty on the part of the person making the mistake." (Per Mosk, J., with one Justice concurring and one Justice concurring in result.) West's Ann.Civ.Code, § 1577; West's Ann.Com.Code, §§ 3405, 4406(1, 4).—*Sun 'n Sand, Inc. v. United California Bank*, 582 P.2d 920, 148 Cal.Rptr. 329, 21 Cal.3d 671.—*Banks* 148(3).

Cal.App. 4 Dist. 1985. Ordinary negligence does not constitute "neglect of a legal duty" as that term is used in statute which defines mistake which nullifies contract for lack of consent. West's Ann. Cal.Civ.Code § 1577.—*Architects & Contractors Estimating Services, Inc. v. Smith*, 211 Cal.Rptr. 45, 164 Cal.App.3d 1001.—*Contracts* 93(1).

Cal.App. 5 Dist. 1970. Negligence of low bidder on reservoir contract in failing to correlate soil report of engineering firm with plans and specifications of water district, as a consequence of which bidder underestimated or miscalculated amount of hard rock to be removed, where soil report on which bidder relied, while not warranted as accurate, was a report used by district's engineers in preparing specifications and was available for study by all prospective bidders, did not constitute "neglect of a legal duty" so as to preclude rescission, regardless of whether miscalculation was labeled a mistake of fact or a mistake of judgment. West's Ann.Civ.Code, § 1577.—*White v. Berrenda Mesa Water Dist.*, 87 Cal.Rptr. 338, 7 Cal.App.3d 894.—*Waters* 183.5.

NEGLECT OF A LEGAL MATTER

D.C. 1989. Filing petition for probate and related pleadings and causing notice of petition to be published after being retained by client to probate estate, then doing virtually nothing for three years, constitutes "neglect of a legal matter" and warrants 30-day suspension. Code of Prof.Resp., DR 6-101(A)(3).—*Matter of Dory*, 552 A.2d 518.—*Atty & C* 44(1), 58.

NEGLECT OF CHILDREN

Mont. 1973. Where wife's husband was charged with inflicting injuries on wife's daughter which caused her death, the infliction of injuries constituted "neglect of children" such as would negate normal husband-wife privilege and permit wife to testify against husband. R.C.M.1947, §§ 19-103, 93-701-4, subd. 1, 94-7209, 94-8802.—*State v. Taylor*, 515 P.2d 695, 163 Mont. 106.—*Witn* 53(3).

NEGLECT OF DUTY

E.D.Pa. 1941. Under Pennsylvania statute requiring a suit at law or in equity against any director of a corporation charging him with any neglect of duty to be brought within six years after commission of act complained of, "neglect of duty" includes the neglect or failure of a corporation's directors to manage corporation's affairs and investments for purposes other than its own benefit and profit. 12 P.S.Pa. § 41.—*Overfield v. Pennroad Corp.*, 42 F.Supp. 586, supplemented 48 F.Supp. 1008, affirmed 146 F.2d 889.—*Corp* 319(4).

Ala.Civ.App. 1991. "Neglect of duty," within meaning of teacher tenure statute, is failure to do what one is required to do by law or contract. Code 1975, § 16-24-8.—Alabama State Tenure Com'n v. Lee County Bd. of Educ., 595 So.2d 476, reversed Ex parte Alabama State Tenure Com'n, 595 So.2d 479, on remand 595 So.2d 482.—Schools 147.9.

Ala.Civ.App. 1985. Failure of teacher to report to his assigned school amounted to "neglect of duty" for which school board was entitled to cancel teacher's contract. Code 1975, § 16-24-8.—Franklin v. Alabama State Tenure Com'n, 482 So.2d 1214.—Schools 147.9.

Ala.Civ.App. 1980. Teacher's failure to administer individual education program was "neglect of duty" permitting cancellation of employment contract under statute. Code 1975, § 16-24-8.—Pratt v. Alabama State Tenure Commission, 394 So.2d 18, certiorari denied Ex parte Pratt, 394 So.2d 22.—Schools 147.9.

Ariz. 1941. Under statute authorizing the governor to remove members of the Industrial Commission for "inefficiency", "neglect of duty", "malfeasance", "misfeasance" and "nonfeasance" in office, all of the grounds except the first imply wrongdoing, some act of omission or commission in office the law required to be done which was not done or if done was done in an unlawful manner. A.R.S. § 23-101.—Holmes v. Osborn, 115 P.2d 775, 57 Ariz. 522.—Work Comp 1082.

Ariz. 1941. An industrial commissioner who at or about the time he took office resigned as president of corporation of which he was sole stockholder but remained as member of board of directors and who thereafter left management of corporation to a general manager and superintendent was not guilty of "nonfeasance" in office" or "neglect of duty" which would warrant his removal, notwithstanding that corporation was allegedly commissioner's alter ego, or that commissioner was paid large dividends by the corporation. A.R.S. § 23-101.—Holmes v. Osborn, 115 P.2d 775, 57 Ariz. 522.—Work Comp 1082.

Ariz. 1941. Industrial commissioner's alleged ownership of cattle ranch at which commissioner spent week-ends in the summertime and for which he made advances from time to time but from which he received no proceeds was not guilty of "nonfeasance in office" or "neglect of duty" which would justify his removal in absence of showing that he neglected to attend his office regularly during office hours or to perform the duties thereof because of such ranch ownership. A.R.S. § 23-101.—Holmes v. Osborn, 115 P.2d 775, 57 Ariz. 522.—Work Comp 1082.

Ariz. 1941. Alleged failure of industrial commissioners to revise rates annually was not a "neglect of duty" or "nonfeasance" justifying removal. A.R.S. §§ 23-101, 23-986.—Holmes v. Osborn, 115 P.2d 775, 57 Ariz. 522.—Work Comp 1082.

Cal. 1957. Under statute proscribing harsh, cruel or unkind treatment of, or neglect of duty to-

wards an insane person, the phrase "neglect of duty" has an accepted legal meaning and means an intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty. West's Ann.Pen.Code, §§ 242, 361.—People v. McCaughan, 317 P.2d 974, 49 Cal.2d 409.—Mental H 51.1.

Cal.App. 3 Dist. 1933. Failure to perform act is not "neglect of duty," authorizing removal of assistant physician at state hospital, unless willful, intentional or inexcusable. Gen.Laws Act 1400, § 14 (repealed).—Rapaort v. Civil Service Commission of State of Cal., 25 P.2d 265, 134 Cal.App. 319.—Health 266.

Cal.App. 5 Dist. 1969. Term "neglect of duty" as used in statute governing grounds for dismissal of state employees remains abstraction until viewed in light of facts surrounding particular case. West's Ann.Gov.Code, § 19572(d).—Gubser v. Department of Employment, 76 Cal.Rptr. 577, 271 Cal.App.2d 240.—States 53.

Colo. 1997. "Neglect of duty" results from teacher's failure to carry out his or her obligations and responsibilities in connection with classroom and other school sponsored activities.—Board of Educ. of West Yuma School Dist. RJ-1 v. Flaming, 938 P.2d 151.—Schools 147.14.

Colo.App. 2002. In context of proceeding for dismissal of teacher, "neglect of duty" occurs when a teacher fails to carry out his or her obligations and responsibilities in connection with classroom and other school sponsored activities. West's C.R.S.A. § 22-63-301.—School Dist. No. 1, City and County of Denver v. Cornish, 58 P.3d 1091, certiorari denied.—Schools 147.14.

Colo.App. 1991. "Neglect of duty" occurs when teacher fails to carry out her obligations and responsibilities in connection with classroom and other school-sponsored activities.—Fredrickson v. Denver Public School Dist. No. 1, 819 P.2d 1068, certiorari denied.—Schools 147.14.

Fla. 1934. "Neglect of duty," as ground for removal of officer, refers to neglect or failure of officer, to do and perform some duty imposed by virtue of his office or required by law. Const. art. 4, § 15.—State ex rel. Hardie v. Coleman, 155 So. 129, 115 Fla. 119, 92 A.L.R. 988.—Offic 66.

Fla. 1934. "Neglect of duty," as ground for suspension of officer, refers to neglect or failure of officer to do and perform some duty imposed by virtue of his office or required by law. Const. art. 4, § 15.—State ex rel. Hardie v. Coleman, 155 So. 129, 115 Fla. 119, 92 A.L.R. 988.—Offic 65.

Ky. 1925. "Neglect of duty," within meaning of amendment authorizing removal from office therefore, does not include "misfeasance" and "malfeasance" under Constitution.—Holliday v. Fields, 275 S.W. 642, 210 Ky. 179.—Offic 66.

Ky. 1925. "Neglect of duty" of peace officer as cause for removal illustrated.—Holliday v. Fields, 275 S.W. 642, 210 Ky. 179.—Sheriffs 6.

Minn. 1941. A "neglect of duty" by a sheriff, so as to constitute a ground for removal from office, may consist of careless or intentional failure to exercise reasonable diligence in performance of an official duty. *Mason's Minn.St.Supp.* 1940, § 3200-33(a).—In re Olson, 300 N.W. 398, 211 Minn. 114.—Sheriffs 6.

Mo.App. E.D. 1986. Determination of city board of police commissioners that police captain neglected his duty as district commander by giving records of revenue from vending machines in station house to bookkeeper who was not member of police department was not supported by substantial evidence; bookkeeper was to check books to locate an error, and both captain and his aide stated that they were unaware that a unit within department was available to conduct an audit of the records; to elicit services of a trained person to aid captain in performing his duties, even if such person was outside of the department, did not rise to level of "neglect of duty" or "improper performance of duties" as specified in department rule.—*Carraway v. Sayad*, 717 S.W.2d 280.—Mun Corp 185(10).

Mo.App. 1945. The failure of guardian of insane ward to produce receipts for many disbursements for which receipts could have been shown, and extravagant manner in which he disbursed ward's funds constituted "neglect of duty" and "mismanagement" warranting guardian's removal. *V.A.M.S.* § 458.510.—In re Mansour's Estate, 185 S.W.2d 360, 238 Mo.App. 623.—Mental H 175.

Neb. 1983. Failure or refusal of guidance counselor to comply with or fulfill duties of his position as set out in written guidelines of the school outlining such duties, particularly with respect to failure to register seniors for classes necessary for graduation and to notify parents of students having academic difficulty, constituted "neglect of duty" under statutory grounds for termination of the counselor. *Neb.Rev.St.* § 79-1254 (Repealed); *Neb.Rev.St.* 1982 Supp. § 79-1254.02; *Laws* 1982, LB 259, §§ 1(4), 4.—*Bickford v. Board of Educ. of School Dist. No. 82 of Hall County*, 336 N.W.2d 73, 214 Neb. 642.—Schools 147.14.

Neb.App. 1996. "Incompetency" or "neglect of duty" as ground for cancellation of contract of school employee is not measured in a vacuum nor against a standard of perfection, but, instead, must be measured against the standard required of others performing the same or similar duties. *Neb.Rev.St.* § 79-12,110.—*Boss v. Fillmore County School Dist. No. 19*, 548 N.W.2d 1, 4 Neb.App. 624, review sustained, affirmed 559 N.W.2d 448, 251 Neb. 669.—Schools 63(1).

N.Y.A.D. 3 Dept. 1942. Evidence that police patrolman assigned to the vice squad made two unsuccessful attempts through a stool pigeon to obtain evidence of unlawful operation of a still and also kept watch over premises involved for a short time thereafter, and that still continued in operation until about a year later when new member of squad easily obtained evidence which resulted in a conviction, sustained conclusion that there was no reasonable effort on part of patrolman to obtain

necessary proof and that he was guilty of "neglect of duty" in violation of Rules and Regulations for the Government of the Binghamton Police Department.—*Abel v. Barvinchak*, 31 N.Y.S.2d 991, 263 A.D. 909.—Mun Corp 185(10).

N.C. 1981. Tenured teachers' conduct in staying away from school pending resolution of criminal charges against him did not constitute "neglect of duty" within meaning of statute governing grounds for which tenured teachers may be dismissed. *G.S.* § 115-142(e)(1)d.—*Overton v. Goldsboro City Bd. of Ed.*, 283 S.E.2d 495, 304 N.C. 312.—Schools 147.14.

Ohio App. 2 Dist. 1959. A deputy sheriff's failure, while investigating an automobile accident, to secure the name and address of the driver or owner of a truck-trailer allegedly involved in the accident constituted neither "neglect of duty" nor "misconduct in office", within statute providing that sheriff shall be responsible for deputy's neglect of duty or misconduct in office. *R.C.* §§ 3.06, 311.05.—*Reckman v. Keiter*, 164 N.E.2d 448, 109 Ohio App. 81, 10 O.O.2d 252.—Sheriffs 100.

Ohio App. 2 Dist. 1947. Violation of police department rule requiring every officer to deliver to secretary of police any article or thing of value which has either been found or seized by officer, or received from any citizen for safekeeping, is a "neglect of duty" or "nonfeasance in office" within meaning of statute, authorizing removal for such causes. *Gen.Code*, § 486-17a.—*Hodapp v. Cole*, 72 N.E.2d 461, 80 Ohio App. 401, 36 O.O. 96, 48 Ohio Law Abs. 438.—Mun Corp 185(1).

Or.App. 1990. Fair Dismissal Appeals Board misinterpreted and misapplied statutory term "neglect of duty" in finding that teacher's failure to take action to deter her husband's use of their home for illegal drug activities did not constitute "neglect of duty"; antidrug workshop training gave teacher notice that off-duty personal drug involvement was contrary to teacher's role in connection with antidrug instructional program, and duty allegedly neglected was not duty to her husband or family, but rather, was to preserve entirety of her role as antidrug teacher by not allowing her home to be used for marijuana sales. *ORS* 342.865(1)(d).—*Jefferson County School Dist. No. 509-J v. Fair Dismissal Appeals Bd.*, 793 P.2d 888, 102 Or.App. 83, review allowed 800 P.2d 789, 310 Or. 547, affirmed 812 P.2d 1384, 311 Or. 389, appeal after remand *Kari v. Jefferson County School Dist. No. 509-J*, 852 P.2d 235, 120 Or.App. 99, review denied 862 P.2d 1305, 318 Or. 25.—Schools 147.9.

Or.App. 1986. Fair Dismissal Appeals Board's definition of "neglect of duty" as referring to failure on part of teacher to engage in conduct designed to result in proper performance of duty, is the applicable definition that all Fair Dismissal Appeals Board panels are to apply, for purpose of statute which lists grounds for which permanent teacher may be dismissed, unless "adequate reasons" for departing from it are given. *ORS* 342.865.—*Thomas v. Cascade Union High School*

Dist. No. 5, 724 P.2d 330, 80 Or.App. 736, appeal after remand 780 P.2d 780, 98 Or.App. 679.—Schools 147.42.

Tenn. 1931. In constitutional provision respecting removal of officers from office, terms “malfeasance” and “neglect of duty” include any wrongful conduct affecting performance of official duty. Const. art. 7, § 1.—*State v. Ward*, 43 S.W.2d 217, 163 Tenn. 265.—Offic 66.

Wash. 1939. The terms “malfeasance” and “neglect of duty” are comprehensive terms including any wrongful conduct that affects, interrupts or interferes with the performance of official duties.—*State ex rel. Knabb v. Frater*, 89 P.2d 1046, 198 Wash. 675.

NEGLECT OF DUTY IN OFFICE

Fla. 1937. Charge that solicitor of county criminal court of record knowingly permitted gambling and proffered no charges therefor was charge of “neglect of duty in office” warranting order of Governor suspending solicitor. F.S.A.Const. art. 4, § 15.—*State ex rel. Hardee v. Allen*, 172 So. 222, 126 Fla. 878.—Dist & Pros Attys 2(5).

NEGLECT OF LEGAL DUTY

Cal. 1951. Where mistake in bidding substantially less than amount intended for contract with city to construct piping system for sewer project resulted from omission of one item in compiling estimates of cost of various parts of work for purpose of computing amount of bid, under all the circumstances, it could not be said as a matter of law that such mistake, even if due to some carelessness, was caused by a “neglect of legal duty”, such as would bar right to equitable relief. Civ.Code, §§ 1577, 1689.—*M. F. Kemper Const. Co. v. City of Los Angeles*, 235 P.2d 7, 37 Cal.2d 696.—Mun Corp 354.

NEGLECT OF LEGAL MATTER

Neb. 1995. Attorney’s failure to file original plan of reorganization in Chapter 13 case within 15 days of filing of bankruptcy petition constitutes “neglect of legal matter,” in violation of code of ethics. Code of Prof.Resp., DR 6-101(A)(3).—*State ex rel. Nebraska State Bar Ass’n v. Schmeling*, 529 N.W.2d 799, 247 Neb. 735.—Atty & C 44(1).

NEGLECT OF OWNER

U.S.N.Y. 1943. Under the Fire Statute exonerating owner of vessel from liability for loss or damage to merchandise by fire unless caused by design or “neglect of owner”, the quoted words mean personal negligence or, in case of corporate owner, negligence of managing officers and agents, as distinguished from that of the master or subordinates. 46 U.S.C.A. § 182.—*Consumers Import Co. v. Zosenjo*, 64 S.Ct. 15, 320 U.S. 249, 88 L.Ed. 30.—Ship 138.

C.C.A.2 (N.Y.) 1931. “Neglect of owner,” rendering shipowner liable for loss of cargo by fire, means negligence of owner personally, or, if corporation, negligence of managing officers or agents.

46 U.S.C.A. § 182.—*The Galileo*, 54 F.2d 913, certiorari granted *Earle & Stoddart v. Ellerman’s Wilson Line, Ltd.*, 52 S.Ct. 498, 286 U.S. 535, 76 L.Ed. 1275, affirmed 53 S.Ct. 200, 287 U.S. 420, 77 L.Ed. 403.—Ship 138.

S.D.Ga. 1979. Under the fire statute, providing that vessel owner shall not be liable for loss by fire unless fire is caused by the design or neglect of such owner, “neglect of owner” means his personal negligence, or in the case of a corporate owner, negligence of managing officers and agents, as distinguished from that of a master or subordinate. 46 U.S.C.A. § 182.—*Ionmar Compania Naviera, S.A. v. Central of Georgia R. Co.*, 471 F.Supp. 942, vacated 666 F.2d 897.—Ship 136.

S.D.N.Y. 1937. “Neglect of owner” within statute relative to liability of owner of vessel for damages from fire means negligence of the owner personally, or in the case of a corporate owner, negligence of its managing agents, as distinguished from that of the ship’s officers. Rev.St. § 4282, 46 U.S.C.A. § 182.—*The Doris Kellogg*, 18 F.Supp. 159, affirmed *Matter of Kellogg S. S. Corp.*, 94 F.2d 1015.—Ship 138.

NEGLECT OF SUCH OWNER

C.A.5 (La.) 1984. With regard to the fire defense, a shipper’s burden is not satisfied by proving that fire which injured cargo was caused by negligence of master or crew, since “neglect of such owner,” within meaning of fire statute, means personal neglect of the owner, or, in case of a corporate owner, negligence of its managing officers or agents. Carriage of Goods by Sea Act, § 4(2)(b), 46 U.S.C.A. § 1304(2)(b); 46 U.S.C.A. § 182.—*Westinghouse Elec. Corp. v. M/V Leslie Lykes*, 734 F.2d 199, rehearing denied ‘*Leslie Lykes*’, M/V, 739 F.2d 633, rehearing denied 739 F.2d 633, certiorari denied *Westinghouse Electric Corporation v. S/S Leslie Lykes*, 105 S.Ct. 577, 469 U.S. 1077, 83 L.Ed.2d 516.—Ship 138.

W.D.N.Y. 1941. The words “neglect of such owner” within statute exempting owner of vessel and vessel from liability for damage by fire unless such fire is caused by the design or neglect of such owner mean personal negligence of the owner, or in case of a corporate owner, negligence of its managing officers or agents, and “negligence” of what in other connections is held to be a nondelegable duty, does not take away the exemption. 46 U.S.C.A. § 182.—*The Buckeye State*, 39 F.Supp. 344.—Ship 138.

NEGLECT OR FAILURE

Cal.Super. 1981. Words “neglect or failure,” within statute giving an additional 30 days for trial if case is not tried on date set for trial because of defendant’s neglect or failure to appear, does not imply fault and, hence, does not preclude resetting a trial within 30 days of an arraignment on a bench warrant issued upon a defendant’s failure to appear for trial due to his being held in custody on another charge. West’s Ann.Penal Code § 1382.—*People v. Heath*, 178 Cal.Rptr. 99, 125 Cal.App.3d Supp. 1.—Crim Law 577.13.

NEGLECT OR MALADMINISTRATION

Mass. 1940. Proper attorney's fees and expenses incurred in attempt to compel former guardian to account in his removal required by his failure to account, and in subsequent process of appointing new guardian and procuring accounting and transfer of estate to new guardian, are damages caused by "neglect or maladministration" of former guardian within statutes providing that execution in action at law on guardian's bond shall be awarded for all damages caused by guardian's neglect or maladministration. G.L.(Ter.Ed.) c. 205, §§ 29, 31, subd. 3.—*Chase v. Faulkner*, 30 N.E.2d 239, 307 Mass. 404.—Guard & W 182(7).

NEGLECT OR REFUSAL TO MAKE ADJUSTMENT OR PAYMENT

N.Y.A.D. 1 Dept. 1939. Where New York city comptroller seeks examination of claimant and fails to pay or adjust the claim for no other reason than lack of information on the merits, due to claimant's inability to appear for examination, such failure is not "neglect or refusal to make adjustment or payment" within charter provision requiring such neglect or refusal for 30 days before bringing action, in the absence of waiver or other loss of right to examine claimant. Greater New York Charter, § 261.—*Johannes v. City of New York*, 12 N.Y.S.2d 430, 257 A.D. 197, affirmed 24 N.E.2d 489, 281 N.Y. 825.—Mun Corp 1021.

NEGLECT OR REFUSAL TO TESTIFY

N.Y. 1916. Under Code Cr.Proc. § 393, where defendant took stand for sole purpose of testifying to circumstances under which he made statements in nature of confessions, there was no "neglect or refusal to testify," so that district attorney's reference to his failure to deny his guilt was proper.—*People v. Trybus*, 113 N.E. 538, 219 N.Y. 18.—Crim Law 721(1).

NEGLECT OR VIOLATION OF OFFICIAL DUTY

Pa.Cmwlt. 1983. Fact that township's police officer, whose vehicle ran red light, after vehicle's emergency lights were engaged, and struck another vehicle while officer was responding to emergency call, may have made a mistake in judgment or have been negligent in failing to use a siren did not indicate that such omission was "conduct unbecoming an officer," or "neglect or violation of official duty" within meaning of statute providing that no township police officer was to be suspended except for certain reasons, including neglect or violation of official duty or conduct unbecoming an officer. 53 P.S. § 55644; 75 Pa.C.S.A. § 3105.—*Appeal of Leis*, 455 A.2d 1277, 72 Pa.Cmwlt. 104.—Mun Corp 185(1).

NEGLECTS

C.C.A.9 (Mont.) 1940. The word "neglects" in Montana statutory provision that action may be dismissed when party entitled to judgment neglects to demand and procure entry thereof for over six months after verdict or final submission does not mean merely "fails" or "omits," and if such party is

without fault, action will not be dismissed, as where he was not aware of decision through court clerk's fault. Rev.Codes Mont.1935, § 9317, subd. 6.—*Carnegie Nat. Bank v. City of Wolf Point*, 110 F.2d 569.—*Pretrial Proc* 587.

Ark. 1934. Statute requiring commitment of father of bastard child to jail if he "refuses" or "neglects" to enter into bond with security does not authorize commitment where father is unable to furnish the bond (Crawford & Moses' Dig. § 778).—*Hemby v. State*, 67 S.W.2d 182, 188 Ark. 586.—*Child* 70.

Ark. 1934. Statute requiring commitment of father of bastard child to jail if he "refuses" or "neglects" to enter into bond with security does not authorize commitment, where father is unable to furnish the bond. Crawford & Moses' Dig. § 778. Word "refuse" implies willful disobedience, and "neglect" to do a thing implies negligence on part of the person; "neglect" being defined as an omission of proper attention, avoidance or disregard of duty, from heedlessness, indifference, or willfulness; negligence.—*Hemby v. State*, 67 S.W.2d 182, 188 Ark. 586.

Mont. 1923. Under Rev.Codes 1921, § 9317, providing that an action may be dismissed by the court when after verdict or final submission the party entitled to judgment neglects to demand and have the same entered for more than six months, an action will not be dismissed because party entitled to judgment merely "fails" to have it entered within six months, but only when he "neglects" to do so; and "final submission" means a submission which is the equivalent of the return of the verdict, and refers to a state of a case when judgment may be demanded as matter of right.—*Samuell v. Montana-Holland Colonization Co.*, 220 P. 1093, 69 Mont. 111.—*Pretrial Proc* 587.

N.C.App. 1994. Sheriff "neglects" to serve process, within meaning of Rule of Civil Procedure authorizing appointment of private process server, only when he is guilty of something more than mere failure to effect service; private process server may be appointed only when sheriff is careless in executing process. Rules Civ.Proc., Rule 4(h), G.S. § 1A-1.—*Williams v. Williams*, 437 S.E.2d 884, 113 N.C.App. 226, affirmed 453 S.E.2d 165, 339 N.C. 608.—*Proc* 53.

Ohio Com.Pl. 1951. The word "neglect" in the statute penalizing one having charge of a county jail who "neglects" or refuses to obey a regulation lawfully prescribed by the Court of Common Pleas for the regulation of such jail means an unintentional failure to act, so that the statute may be violated by an unintentional failure to conform to a lawfully prescribed jail rule or by an unintentional failure to perform a duty in respect to the jail. Gen.Code, § 12886.—*State v. Harland*, 105 N.E.2d 293, 61 Ohio Law Abs. 455.—*Prisons* 10.

Pa. 1934. Court of quarter sessions could remove township commissioner from office for paying salaries to men ostensibly employed at sewage disposal plant, not functioning, as against contention that first class township law which permits court to

remove township officer who "refuses" or "neglects" to perform his duties, refers only to nonperformance of duties and not to error in performance of duties. 53 P.S. §§ 19092-604, 19092-2403.—In re Phillips, 169 A. 762, 313 Pa. 461.—Townes 28.

NEGLECTS AND REFUSES

N.H. 1886. Gen.Laws, c. 229, § 10, providing that any party who gives notice of the taking of a deposition, and who "neglects and refuses" to take the same, shall be liable to the adverse party for 25 cents per mile for actual travel of himself and his attorney to attend the same, includes a case of innocent omission through no fault of the party giving the notice, and no distinction is made between that and a case of willful neglect.—Robertson v. Northern R. R., 3 A. 621, 63 N.H. 544.

NEGLECTS ANY DUTY IMPOSED BY LAW

Cal.App. 1 Dist. 1958. Under the statute providing that any person who while under the influence of intoxicants drives a vehicle and when so driving does "any act forbidden by law" or "neglects any duty imposed by law" which act or neglect proximately causes injury to any other person than himself is guilty of a felony, quoted phrases refer to acts forbidden by the Vehicle Code and the duties imposed by the Vehicle Code and the statute is not invalid as vague and indefinite. West's Ann.Vehicle Code, § 501.—People v. Clenney, 331 P.2d 696, 165 Cal.App.2d 241.—Crim Law 13.1(4).

NEGLECTS OR REFUSES

Conn. 1955. In statute providing that when any person who is recipient of public assistance has husband who is able to provide all or part of such person's support but neglects or refuses to do so, Court of Common Pleas may order him to do so, words "neglects or refuses" connote a failure or refusal to fulfill a legal obligation, and when a husband has no legal obligation to support his wife it is not the intent of the statute that he should be liable to the state for her support. Gen.St.1949, § 8586; Gen.St.Supp.1953, § 1112c.—State v. Jordan, 114 A.2d 694, 142 Conn. 375.—Hus & W 4; Paupers 51.

Mo. 1981. Under principle that meaning and effect should be given to each word of statute if possible and that one word should not be construed so as to cause it to be included in or to be repetitive of another word in statute, phrase "neglects or refuses" as used in sales tax statute of limitations was not applicable to business proprietor who, in failing to file sales tax return, was neither negligent nor careless but exercised "reasonable prudence and good faith" on basis of reasonable belief that her business was not covered by the sales tax statute. V.A.M.S. § 144.220.—Lora v. Director of Revenue, 618 S.W.2d 630.—Tax 1342.

N.J.Super.A.D. 1960. "Neglects or refuses", within statute relating to the liability of a corporation agent who neglects or refuses to furnish certain information in connection with execution against the corporation, connotes not mere failure or omission but a willful failure to discharge, or a reckless

indifference to a known obligation. N.J.S. 2A:17-74, 75, N.J.S.A.—Thompson v. Breslove, 162 A.2d 587, 62 N.J.Super. 208.—Corp 523.

NEGLECTS OR REFUSES TO APPEAR

S.D.Cal. 1953. As used in statute providing that every person who has been duly subpoenaed to appear as a witness before any court-martial, military commission, court of inquiry, etc., and who willfully neglects or refuses to appear, etc., is guilty of an offense, the modifier "willfully" qualifies only the words "neglects or refuses to appear", which constitute a distinct and separate offense under the statute. Fed.Rules Crim.Proc. rule 7(c), 18 U.S.C.A.; Uniform Code of Military Justice, art. 47, 50 U.S.C.A. § 622.—U.S. v. Shibley, 112 F.Supp. 734.—Armed S 40(1).

NEGLECT THAT PLACED IN JEOPARDY THE LIVES OR PROPERTY OF OTHERS

Tex.App.—Tyler 1985. Conduct of claimant in her employment with travel agency in preparing tickets for customer's with incorrect names and in booking tickets for customers to incorrect destinations amounted to "neglect that placed in jeopardy the lives or property of others" and, as such, rendered plaintiff guilty of "misconduct" disqualifying her from receiving unemployment benefits upon her discharge considering that tickets and reservations were valuable property to customers as members of traveling public and that claimant's conduct was not attributable to simple inability, lack of efficiency, or inexperience. Vernon's Ann.Texas Civ.St. art. 5221b-17(q).—Mercer v. Ross, 685 S.W.2d 134, writ granted, reversed 701 S.W.2d 830.—Social S 388.5.

NEGLECT TO MAINTAIN

Pa.Super. 1953. Charge in information of failure to properly support wife had meaning precisely equivalent to words "neglect to maintain" wife within statute relative to desertion and nonsupport by husband. 18 P.S. § 4733.—Com. v. Greene, 98 A.2d 202, 173 Pa.Super. 315.—Hus & W 312.

NEGLECT TO PAY RENT

Mass. 1938. A lessee's failure to pay rent when due was "neglect to pay rent" within statute providing that, upon neglect or refusal to pay rent due under written lease, 14 days' notice to quit given in writing shall be sufficient to determine lease, and lessor was not required to demand rent to maintain action to recover possession of premises after giving required notice. G.L.(Ter.Ed.) c. 186, § 11; c. 239.—Pierce v. Dequattro, 13 N.E.2d 446, 299 Mass. 533.—Land & Ten 296(1), 297(2).

NEGLECT TO PROSECUTE

S.D.N.Y. 1959. Where stockholder's derivative action in state court was dismissed by state court because of failure of plaintiff to appear for examination before trial, there was no "neglect to prosecute" and no "voluntary discontinuance" within meaning of section of New York Civil Practice Act providing that if action is commenced within time

limited therefor, and is terminated in any other manner than by "voluntary discontinuance," dismissal of complaint for "neglect to prosecute" action, or final judgment on the merits, plaintiff may commence new action for same cause after expiration of time so limited and within one year after such termination. Civil Practice Act N.Y. § 23.—*Marco v. Dulles*, 177 F.Supp. 533.—*Lim of Act 130(5)*.

S.D.N.Y. 1950. Under the statute providing that, if an action is begun within time limited and is terminated in any manner but by dismissal or "neglect to prosecute", action may be begun within one year of termination, dismissal of action for plaintiff's failure to obey an order is a dismissal for neglect despite fact that neglect is attributable to plaintiff's inability to comply with the order, and a new action may not be begun after time originally limited. Civil Practice Act N.Y., § 23.—*Producers Releasing Corp. De Cuba v. Pathe Industries*, 10 F.R.D. 29, reversed 184 F.2d 1021.—*Lim of Act 130(5)*.

S.D.N.Y. 1950. Under the statute providing that, if an action is begun within time limited and terminated in any manner but by dismissal for "neglect to prosecute", the new action may be begun within one year of termination, dismissal following repeated refusal of corporation's president to appear for examination was a dismissal for neglect which barred a second action not begun within time originally limited. Civil Practice Act N.Y., § 10, subd. 1; § 23.—*Producers Releasing Corp. De Cuba v. Pathe Industries*, 10 F.R.D. 29, reversed 184 F.2d 1021.—*Lim of Act 130(5)*.

N.Y.A.D. 1 Dept. 1991. Dismissal of property owners' prior action due to failure to comply with court ordered discovery would not be construed as "neglect to prosecute" within meaning of rule governing time during which plaintiff may commence new action based upon same transaction or occurrence as previously terminated action and, thus, property owners' subsequent action arising out of same occurrence as prior action was not time barred; trial justice struck out proposed language which would have made dismissal with prejudice and property owners complied substantially with discovery orders in earlier action. *McKinney's CPLR 205(a)*.—*Carven Associates v. American Home Assur. Corp.*, 569 N.Y.S.2d 738, 173 A.D.2d 369.—*Lim of Act 130(5)*.

N.Y.A.D. 1 Dept. 1979. Where motion to dismiss prior action was granted on call of calendar on trial date and no one appeared for plaintiff, and when plaintiff's counsel appeared and moved to vacate default approximately one-half hour later, counsel stated that he was ready to go to trial but had no witnesses available and could not "actually proceed to trial," dismissal of prior action was for "neglect to prosecute" and thus institution of present, identical action was improper under statute providing that upon dismissal of action other than by voluntary discontinuance, for neglect to prosecute, or on the merits, plaintiff may commence new action upon same cause within six months. *CPLR 205(a)*.—*Laffey v. City of New York*, 421 N.Y.S.2d

350, 72 A.D.2d 685, affirmed 436 N.Y.S.2d 707, 52 N.Y.2d 796, 417 N.E.2d 1248.—*Pretrial Proc 693.1*.

N.Y.A.D. 1 Dept. 1965. The dismissal of action for plaintiff's willful refusal to comply with court's direction to select jury and to proceed to trial was occasioned by "neglect to prosecute" within CPLR section permitting commencement of new action within six months after termination of prior action where such termination results, inter alia, other than from dismissal of complaint for neglect to prosecute the action. *CPLR § 205*.—*Schuman v. Hertz Corp.*, 257 N.Y.S.2d 400, 23 A.D.2d 646, motion denied 266 N.Y.S.2d 404, 16 N.Y.2d 1081, 213 N.E.2d 695, reversed 268 N.Y.S.2d 563, 17 N.Y.2d 604, 215 N.E.2d 683.—*Lim of Act 130(5)*.

N.Y.A.D. 2 Dept. 1994. Order dismissing first medical malpractice action after plaintiffs' protracted and repeated delays was for "neglect to prosecute" within the meaning of rule permitting plaintiff to commence new action within six months of termination unless dismissal was for grounds including neglect to prosecute. *McKinney's CPLR 205(a)*.—*Williams v. Yu*, 615 N.Y.S.2d 752, 207 A.D.2d 442.—*Lim of Act 130(5)*.

N.Y.A.D. 4 Dept. 1987. Action was dismissed for "neglect to prosecute," so that plaintiff could not bring second suit upon same cause of action, where dismissal had been entered only after plaintiff failed to timely restore case to calendar. *McKinney's CPLR 205*.—*Benderson Development Co., Inc. v. Litton Business Systems, Inc.*, 516 N.Y.S.2d 138, 130 A.D.2d 941, appeal denied 521 N.Y.S.2d 224, 70 N.Y.2d 607, 515 N.E.2d 909.—*Judgm 570(12)*.

N.Y.Sup. 1968. Where another trial in which plaintiff's trial counsel was engaged was not completed until 6 p.m. of day plaintiff's case was set for trial term, denial of application for adjournment on ground of actual engagement was not intended to carry consequences of dismissal for "neglect to prosecute," and statutory provision permitting second action for same cause to be brought within one year after termination of first action even though limitation period has expired was applicable. *CPLR 205(a)*, 218(b).—*Cordova v. City of New York*, 293 N.Y.S.2d 673, 57 Misc.2d 823.—*Lim of Act 130(7)*.

N.Y.Sup. 1965. Dismissal of plaintiff's prior federal court action on account of plaintiff's failure to specify those records of defendant required by plaintiff at trial was not "neglect to prosecute" his action, within limitation statute savings clause, and did not require that tolling of limitations by savings clause be excluded when considering excuse for delay in prosecution of present action. *CPLR § 205*.—*Izquierdo v. Cities Service Oil Co. (Pa.)*, 264 N.Y.S.2d 58, 47 Misc.2d 1087.—*Seamen 29(5.6)*.

NEGLECT TO PROSECUTE HIS APPEAL

R.I. 1898. The words "neglect to prosecute his appeal" clearly imply that an appeal has been taken, and as used in Gen. Laws, c. 251, § 3 authorizing the Supreme Court to grant a trial in a case

decided by a probate court where a party shall have neglected to prosecute his appeal, do not authorize the granting of a trial on the petition of an administrator to correct a mistake in his inventory, where no appeal has been taken.—*Cronshaw v. Cronshaw*, 41 A. 563, 21 R.I. 54.

NEGLECT TO PROSECUTE THE ACTION

N.Y.Sup. 1959. Dismissal of first action because it had not been restored to calendar within one year after it was struck therefrom for failure to file a statement of readiness was not a dismissal for "neglect to prosecute the action" within statute giving a plaintiff a year after dismissal of an action, other than upon the merits, to sue again on same cause of action but excepting from its application cases terminated for dismissal of complaint for neglect to prosecute the action and second action, brought more than three months after expiration of limitations period could be maintained where it was brought within one year after dismissal of first action. Civil Practice Act, §§ 23, 49; Rules of Civil Practice, rule 302; App.Div.Rules, 2d Dept., Special Rule Requiring the Filing of a Statement of Readiness; Supreme Court Rules—Queens County, Trial Terms, rule 2(e).—*Austrian v. Red Arrow Bonded Messenger Corp.*, 184 N.Y.S.2d 92, 16 Misc.2d 1082.—*Lim of Act 130(5)*.

NEGLECT TO REPAIR

La.App. 4 Cir. 1970. "Neglect to repair" within statute providing that owner of building is answerable for damage occasioned by its ruin, when caused by neglect to repair, means failure to keep in repair. LSA—C.C. art. 2322.—*Adamson v. Westinghouse Elec. Corp.*, 236 So.2d 556.—*Neglig 1101*.

NEGLECT TO RESTRAIN OR PREVENT

Ohio App. 7 Dist. 1966. Word "allow" used in municipal curfew ordinance prohibiting parent to allow child to violate curfew ordinance means either "permit" or "neglect to restrain or prevent", and it requires actual or constructive knowledge on art of parent or guardian that the child is violating the curfew ordinance or circumstances which are such that a reasonably responsible parent should have known that the child was violating the curfew.—*City of Eastlake v. Ruggiero*, 220 N.E.2d 126, 7 Ohio App.2d 212, 36 O.O.2d 345.—*Mun Corp 622*.

NEGLECT TO TAKE THE OATH

Md. 1912. Under Const. art. 1, § 7, which provides that an officer who refuses or neglects to take the oath or affirmation of office shall be deemed to have refused the office, and a new selection shall be made, and under Code 1912, art. 20, § 1, which requires constables to so qualify within 30 days after their appointment, neglect of a constable to take the oath, etc., within that time, deprives him of the office; the term "neglect to take the oath," as used in the Constitution, meaning neglect of an appointee to take the oath within the time required by law.—*Little v. Schul*, 84 A. 649, 118 Md. 454.

NEGLIGENCE

U.S.Mo. 1949. "Negligence" within Federal Employers' Liability Act existed if employer knew or by exercise of due care should have known that prevalent standards of conduct were inadequate to protect employee and similarly situated employees. Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51.—*Urie v. Thompson*, 69 S.Ct. 1018, 337 U.S. 163, 93 L.Ed. 1282, 11 A.L.R.2d 252.—*Emp Liab 14*.

U.S.N.Y. 1932. Recovery could be had under Merchant Marine Act 1920, § 33, 41 Stat. 1007, § 33, 46 U.S.C.A. § 688, which provides that, in case of death of seaman as result of "personal injury" in course of employment, personal representative may maintain damage action at law, and that statutes conferring or regulating right of action for death in case of railway employees shall be applicable, since breach of duty to provide cure and maintenance for seaman was "negligence" and aggravation of illness thereby was "personal injury."—*Cortes v. Baltimore Insular Lines*, 53 S.Ct. 173, 287 U.S. 367, 77 L.Ed. 368.

U.S.N.Y. 1930. Assault on seaman by foreman to reprimand him for tardiness and compel him to work held "negligence" within Federal Employers' Liability Act. Federal Employers' Liability Act § 1, 45 U.S.C.A. § 51; Merchant Marine Act 1920, § 33, 46 U.S.C.A. § 688.—*Alpha S.S. Corporation v. Cain*, 50 S.Ct. 443, 281 U.S. 642, 74 L.Ed. 1086.—*Seamen 29(1), 29(3)*.

U.S.N.Y. 1930. "Negligence" in Federal Employers' Liability Act includes all meanings given it by courts, and within word as ordinarily used. Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51.—*Jamison v. Encarnacion*, 50 S.Ct. 440, 281 U.S. 635, 74 L.Ed. 1082.—*Emp Liab 3*.

U.S.N.Y. 1930. Unprovoked assault on longshoreman by foreman to hurry him about work held "negligence" within Federal Employers' Liability Act. Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51; Merchant Marine Act 1920, § 33, 46 U.S.C.A. § 688.—*Jamison v. Encarnacion*, 50 S.Ct. 440, 281 U.S. 635, 74 L.Ed. 1082.—*Seamen 29(3)*.

U.S.N.Y. 1905. Even an expert may be guilty of "negligence" in doing what, at the time, his judgment approves.—*Oceanic Steam Nav. Co. v. Aitken*, 25 S.Ct. 317, 196 U.S. 589, 49 L.Ed. 610.

U.S.Pa. 1907. "Negligence" consists of conduct which common experience or the special knowledge of the actor shows to be so likely to produce the result complained of, under the circumstances known to the actor, that he is held answerable for that result, although it was not certain, intended, or foreseen.—*Schlemmer v. Buffalo, R & P R Co*, 27 S.Ct. 407, 205 U.S. 1, 51 L.Ed. 681.

U.S.Va. 1943. Under amendment to Federal Employers' Liability Act abolishing assumption of risk doctrine, employer's liability is to be determined under the general rule which defines "negligence" as the lack of due care under the circumstances, or the failure to do what a reasonable and

prudent man would ordinarily have done under circumstances of the situation, or doing what such a person under the existing circumstances would not have done. Federal Employers' Liability Act § 1 et seq., and § 4, as amended, 45 U.S.C.A. § 51 et seq., and § 54.—Tiller v. Atlantic Coast Line R. Co., 63 S.Ct. 444, 318 U.S. 54, 87 L.Ed. 610, 143 A.L.R. 967.—Emp Liab 11.

U.S.Wash. 1916. A violation of the Safety Appliance Act is "negligence" within Federal Employers' Liability Act.—Spokane & I.E.R. Co. v. Campbell, 36 S.Ct. 683, 241 U.S. 497, 60 L.Ed. 1125.

U.S. Armed Forces 2001. With respect to the culpable negligence element of involuntary manslaughter, "negligence" is conduct that involves the creation of substantial and unjustifiable risk of which the person should be aware in view of all the circumstances. UCMJ, Art. 119, 10 U.S.C.A. § 919; MCM 1995, Pt. IV, ¶ 44, subd. b(2).—U.S. v. Oxendine, 55 M.J. 323.—Mil Jus 644.

ACMR 1987. "Negligence" for purposes of offense of negligently suffering military property to be damaged, is defined as damage caused by act or failure to act by person who is under duty to use due care which demonstrates lack of care for property which reasonably prudent person would have used under same or similar circumstances. UCMJ, Art. 108, 10 U.S.C.A. § 908.—U.S. v. Fuller, 25 M.J. 514, review denied 27 M.J. 290.—Mil Jus 790.

C.A.D.C. 1969. "Negligence" is conduct that falls short of the reasonable care standard.—Becker v. Colonial Parking, Inc., 409 F.2d 1130, 38 A.L.R.3d 125, 133 U.S.App.D.C. 213.—Neglig 233.

C.A.D.C. 1962. "Negligence" under Federal Employers' Liability Act does not mean negligence in common-law sense of term and is of broader significance. Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51.—Slaughter v. Atlantic Coast Line R. Co., 302 F.2d 912, 8 A.L.R.3d 436, 112 U.S.App. D.C. 327, certiorari denied 83 S.Ct. 48, 371 U.S. 827, 9 L.Ed.2d 65.—Emp Liab 11.

C.A.2 2000. "Negligence," under the Internal Revenue Code section imposing penalties for an underpayment of tax attributable to negligence, is a lack of due care or a failure to do what a reasonable and prudent person would do under the circumstances. 26 U.S.C.A. § 6653(a)(1, 2).—Addington v. C.I.R., 205 F.3d 54.—Int Rev 5219.

C.A.3 2002. Generally, "negligence" standard for addition to tax is objective as in the tort context, and requires finding of lack of due care or failure to do what reasonable and prudent person would do under analogous circumstances. 26 U.S.C.A. § 6662(c); 26 C.F.R. § 1.6662-3(b)(1).—Neonatology Associates, P.A. v. C.I.R., 299 F.3d 221.—Int Rev 5219.

C.A.4 1996. As generally used, "negligence" in context of income tax underpayment, as basis for assessing additions to tax, denotes lack of due care or failure to do what reasonable and ordinarily prudent person would do under circumstances.—Korshin v. C.I.R., 91 F.3d 670.—Int Rev 5219.

C.A.4 1994. "Negligence" for purposes of negligence penalty in underpayment of tax is lack of due care or failure to do what reasonable and ordinarily prudent person would do under the circumstances. 26 U.S.C.(1982 Ed.Supp. IV) § 6653(a)(1)(A).—Schrum v. C.I.R., 33 F.3d 426, on remand 1995 WL 103567, affirmed in part, vacated in part 114 F.3d 1177.—Int Rev 5219.

C.A.5 1996. "Negligence" required to support negligence penalty includes any failure to reasonably attempt to comply with tax code, including lack of due care or failure to do what reasonable or ordinarily prudent person would do under circumstances. 26 U.S.C.A. § 6653(a).—Durrett v. C.I.R., 71 F.3d 515.—Int Rev 5219.

C.A.5 1995. In determining whether taxpayer is subject to negligence penalty, "negligence" includes any failure to reasonably attempt to comply with tax code, including lack of due care or failure to do what reasonable or ordinarily prudent person would do under circumstances. 26 U.S.C.(1982 Ed.Supp. V) § 6653(a)(1, 2).—Westbrook v. C.I.R., 68 F.3d 868.—Int Rev 5219.

C.A.5 1995. "Negligence," warranting penalty for underpayment of taxes, includes any failure to reasonably attempt to comply with Internal Revenue Code, including lack of due care or failure to do what reasonable or ordinarily prudent person would do under circumstances. 26 U.S.C.(1982 Ed.) § 6653(a).—Chamberlain v. C.I.R., 66 F.3d 729, rehearing denied.—Int Rev 5219.

C.A.5 1992. Internal Revenue Service (IRS) may penalize taxpayer for any underpayment due to negligence or disregard of rules and regulations; "negligence" includes any failure to make a reasonable attempt to comply with the Tax Code, including the failure to do what a reasonable person would do under similar circumstances; "disregard" includes any careless, reckless or intentional disregard. 26 U.S.C.(1988 Ed.) § 6653(a)(1, 3).—Heasley v. C.I.R., 967 F.2d 116.—Int Rev 5219.

C.A.5 1991. Internal Revenue Service may penalize taxpayers for any underpayment due to negligence or disregard of rules and regulations; "negligence" includes any failure to reasonably attempt to comply with tax code, including lack of due care or failure to do what reasonable or ordinarily prudent person would do under circumstances. 26 U.S.C.(1988 Ed.) § 6653.—Portillo v. C.I.R., 932 F.2d 1128, on remand 1992 WL 27462, reversed 988 F.2d 27.—Int Rev 5217, 70, 5219.

C.A.6 2002. For purposes of statute providing for addition to tax for underpayment of tax due to negligence, "negligence" is defined as a lack of due care or failure to do what a reasonable and ordinarily prudent person would do under the circumstances. 26 U.S.C.(1988 Ed.) § 6653.—Barlow v. C.I.R., 301 F.3d 714.—Int Rev 5219.

C.A.7 1988. "Negligence" in preparation of tax return warranting imposition of penalty is a lack of ordinary care or failure to do what a reasonable and ordinary prudent person would do under the

circumstances. 26 U.S.C.A. § 6653(a).—*Forseth v. C.I.R.*, 845 F.2d 746.—Int Rev 5219.

C.A.9 1997. "Negligence" warranting addition to tax is defined as lack of due care or failure to do what reasonable and ordinary prudent person would do under circumstances. 26 U.S.C.A. § 6653.—*Little v. C.I.R.*, 106 F.3d 1445.—Int Rev 5219.

C.A.9 1991. "Negligence," under tax statute providing for penalty for underpayment due to negligence or disregard of rules or regulations, is defined as lack of due care or failure to do what reasonable and prudent person would do under similar circumstances. 26 U.S.C.A. § 6653.—*Allen v. C.I.R.*, 925 F.2d 348.—Int Rev 5219.

C.A.9 1987. "Negligence," for purpose of statute permitting additions to tax based on any negligent or intentional underpayment, is determined by reasonable, prudent person standard. 26 U.S.C.A. § 6653(a).—*Hansen v. C.I.R.*, 820 F.2d 1464.—Int Rev 5219.

C.A.10 2001. "Negligence" on part of taxpayer, as will warrant imposition of additions to tax, is a lack of due care or a failure to do what a reasonable and prudent person would do under similar circumstances. 26 U.S.C.(1988 Ed.) § 6653(a)(1).—*Keeler v. C.I.R.*, 243 F.3d 1212.—Int Rev 5219.

C.A.10 1995. For purposes of addition to tax for negligence, "negligence" is lack of due care or failure to do what reasonable and prudent person would do under similar circumstances. 26 U.S.C.(1982 Ed.) § 6653.—*Anderson v. C.I.R.*, 62 F.3d 1266.—Int Rev 5219.

C.A.5 (Ala.) 1974. "Negligence" is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do, with reference to the situation and knowledge of the parties under all the attendant circumstances.—*Ryder Truck Lines, Inc. v. Brennan*, 497 F.2d 230.—Neglig 233.

C.A.5 (Ala.) 1951. "Negligence" is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.—*U.S. v. Waterman S.S. Corp.*, 190 F.2d 499.—Neglig 233.

C.A.9 (Ariz.) 1950. "Negligence" is the failure to do what a reasonably prudent person would ordinarily have done under existing circumstances.—*Corrigan v. San Marcos Hotel Co.*, 182 F.2d 719.—Neglig 233.

C.A.8 (Ark.) 1970. Under Arkansas law, "negligence" is the failure to do that which a person of ordinary care and prudence would do under the same or similar circumstances, or the doing of which a person of ordinary care and prudence would not do under the same or similar circum-

stances.—*Oliver v. Hallett Const. Co.*, 421 F.2d 365.—Neglig 232.

C.A.8 (Ark.) 1965. Instruction that "negligence" within Arkansas rule allowing insured to recover from insurer for excess coverage for negligent refusal of liability insurer to effect settlement of injury claim which it could have settled within limits of coverage is failure to do something which person of ordinary care and prudence would do under same or similar circumstances, or doing of something which person of ordinary care and prudence would not do under same or similar circumstances was correct.—*State Farm Mut. Auto. Ins. Co. v. Jackson*, 346 F.2d 484.—Insurance 3350.

C.A.9 (Cal.) 2001. Under California law, "willful or wanton misconduct" is separate and distinct from negligence; unlike "negligence," which implies a failure to use ordinary care, and even "gross negligence," which connotes such a lack of care as may be presumed to indicate a passive and indifferent attitude toward results, "willful misconduct" is not marked by a mere absence of care, but rather, involves a more positive intent actually to harm another or to do an act with a positive, active and absolute disregard of its consequences.—*Dazo v. Globe Airport Sec. Services*, 268 F.3d 671, opinion withdrawn and superseded on rehearing 295 F.3d 934.—Neglig 273, 275.

C.A.9 (Cal.) 1979. In action to recover for injuries sustained during ship repair work by employee of ship repair contractor, record supported finding that the United States, which owned vessel and officers and employees of which knew that working conditions violated regulations and created unreasonable risk of harm to employee, was guilty of "negligence" as that word is used in the Longshoremen's and Harbor Workers' Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, § 5(b), 33 U.S.C.A. § 905(b).—*Lawson v. U.S.*, 605 F.2d 448.—Ship 86(2.5).

C.A.10 (Colo.) 1962. "Negligence" is failure to exercise that degree of care which an ordinarily prudent person would exercise under like facts and circumstances.—*Anderson v. Hudspeth Pine, Inc.*, 299 F.2d 874.—Neglig 232.

C.A.10 (Colo.) 1955. Simple "negligence" is failure to observe, for protection of others, that degree of care, caution, and vigilance which circumstances justly demand or, in other words, is want of that care and prudence which an ordinarily careful and prudent person would exercise under all the circumstances.—*Von Lackum v. Allan*, 219 F.2d 937.

C.A.11 (Ga.) 1988. "Negligence" which is proximate cause of injury is act which person exercising ordinary caution and prudence could have foreseen producing an injury.—*George v. Brandy Chase Ltd. Partnership*, 841 F.2d 1094.—Neglig 387.

C.A.7 (Ill.) 1992. In determining whether tax preparer's actions constitute "negligence," for purposes of statute providing for assessment of penalties, applicable standard is whether there was lack of due care or failure to do what reasonable and

ordinarily prudent person would do under circumstances. 26 U.S.C.A. § 6694(a).—Goulding v. U.S., 957 F.2d 1420, 132 A.L.R. Fed. 685.—Int Rev 5219.60.

C.A.7 (Ill.) 1988. "Negligence" is failure to take level of precautions commensurate with likelihood and magnitude of risk created by defendant's conduct; the greater the benefits of precaution, the more precautions must be taken.—Needham v. White Laboratories, Inc., 847 F.2d 355.—Neglig 230.

C.A.7 (Ill.) 1983. Failure to perform legal duty is "negligence," or if cost of performing it would be much less than expected benefits "gross negligence."—Graf v. Elgin, Joliet and Eastern Ry. Co., 697 F.2d 771, on remand 1985 WL 2992, affirmed 790 F.2d 1341, appeal after remand 790 F.2d 1341.—Neglig 273.

C.A.7 (Ill.) 1948. Under Federal Employers' Liability Act making railroad liable for injury to employee resulting from "negligence" of railroad, the negligence intended is common law negligence, which is lack of due care under the circumstances, or the failure to do what a reasonable and prudent man would normally have done under the circumstances, or the doing what a reasonable and prudent man under the existing circumstances would not have done. Federal Employers' Liability Act, as amended, 45 U.S.C.A. § 51 et seq.—Larsen v. Chicago & N. W. Ry. Co., 171 F.2d 841.—Emp Liab 11.

C.A.7 (Ind.) 1966. The negligence clause in sidetrack contract between railroad and mining corporation which provided for contribution if liability arose from joint or concurring negligence of corporation and railroad included negligence per se so that railroad's liability under Safety Appliance Act constituted "negligence" within meaning of the sidetrack contract. Safety Appliance Act of 1910, § 2, 45 U.S.C.A. § 11.—Chicago, M., St. P. & P. R. Co. v. Alva Coal Corp., 365 F.2d 49.—Indem 33(7).

C.A.8 (Iowa) 1983. Contributory negligence of a plaintiff is determined by the same tests and rules as the negligence of the defendant but the respective duties underlying the two concepts are not the same; "negligence" relates to the conduct which creates an unreasonable risk of harm to others whereas "contributory negligence" involves conduct which creates an unreasonable risk of harm to one's self or one's own interests.—Board of Water Works Trustees of City of Des Moines, Iowa v. Alvord, Burdick & Howson, 706 F.2d 820.—Neglig 502(2).

C.A.5 (La.) 1994. Chapter 11 debtors' failure to list creditor in mailing matrix was not mere "negligence" or "inadvertence," and thus, debt owed to creditor was nondischargeable, absent actual or constructive notice to creditor of bankruptcy case until four years later, where creditor's present counsel and debtor's current law firm had both been counsel of record in previous bankruptcy proceeding filed by company whose debts debtor had guaranteed to creditor, two and one-half years after filing bankruptcy debtors filed request to place creditor's name on mailing matrix and inserted

wrong address, debtors could have learned creditor's correct address simply by picking up telephone, and debtors failed to properly schedule a number of other creditors for several years.—Matter of Smith, 21 F.3d 660.—Bankr 3361.

C.A.5 (La.) 1989. Finding of "negligence" requires a duty or obligation recognized by the law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks; a failure on the person's part to conform to the standard required; a reasonably close causal connection between the conduct and the resulting injury, known as "legal cause" or "proximate cause"; and actual loss or damages resulting to the interests of another.—Miller-Schmidt v. Gastech, Inc., 864 F.2d 1181.—Neglig 202.

C.A.5 (La.) 1986. Under Louisiana Oil Field Indemnity Act of 1981 [LSA-R.S. 9:2780], phrase "to the extent" limits statute's nullifying effect to those portions of oil field service contract relating to indemnity for indemnitee's own negligence or fault rather than modifying terms "negligence" or "fault" ("strict liability") of the indemnitee.—Melo v. Conoco, Inc., 784 F.2d 1320, opinion withdrawn 792 F.2d 56, question certified 794 F.2d 992, certified question denied 493 So.2d 1211, reconsideration granted 496 So.2d 340, certified question accepted 496 So.2d 340, certified question answered 504 So.2d 833, answer to certified question conformed to 817 F.2d 275.—Indem 22.

C.A.5 (La.) 1967. "Negligence" within statute providing for penalty of five per cent of underpayment of income taxes due to negligence means lack of due care or failure to do what a reasonable and ordinarily prudent person would do under the circumstances. 26 U.S.C.A. (I.R.C.1954) § 6653(a).—Marcello v. C.I.R., 380 F.2d 499, 5 A.L.R. Fed. 190, certiorari denied 88 S.Ct. 787, 389 U.S. 1044, 19 L.Ed.2d 835, on remand 1968 WL 1350, affirmed 414 F.2d 268.—Int Rev 5219.

C.A.8 (Mo.) 1950. "Negligence" and "willful and wanton conduct" are not synonymous in Illinois law and what is willful and wanton conduct in one situation may be negligence in another.—Gulf, M. & O. R. Co. v. Freund, 183 F.2d 1005, 21 A.L.R.2d 729, certiorari denied 71 S.Ct. 280, 340 U.S. 904, 95 L.Ed. 654.—Neglig 275.

C.A.10 (N.M.) 1951. Actionable "negligence" consists of the violation of a duty to another with resulting injury to him.—Carnes v. United States, 186 F.2d 648.—Neglig 202.

C.A.2 (N.Y.) 1996. "Negligence" under tax statute providing penalty for underpayment due to negligence is lack of due care or failure to do what reasonable and prudent person would do under similar circumstances. 26 U.S.C.A. § 6653.—Holmes v. U.S., 85 F.3d 956, on remand 1997 WL 65853.—Int Rev 5219.

C.A.2 (N.Y.) 1991. "Negligence" is conduct that falls below the standard of what a reasonably prudent person would do under similar circumstances

judged at the time of the conduct at issue.—*Fane v. Zimmer, Inc.*, 927 F.2d 124.—Neglig 233.

C.A.2 (N.Y.) 1982. Under Jones Act, “negligence” requires more than knowledge of a hazard; it entails failure to adopt safer alternative courses of action. *Jones Act*, 46 U.S.C.A. § 688.—*Akermanis v. Sea-Land Service, Inc.*, 688 F.2d 898, certiorari denied 103 S.Ct. 2087, 461 U.S. 927, 77 L.Ed.2d 298, appeal after remand 742 F.2d 1431, certiorari denied 104 S.Ct. 700, 464 U.S. 1039, 79 L.Ed.2d 165.—*Seamen* 29(1).

C.A.4 (N.C.) 2002. Under North Carolina law, “negligence” is the failure to exercise proper care in the performance of a legal duty owed by a defendant to a plaintiff under the circumstances.—*Eisenberg v. Wachovia Bank, N.A.*, 301 F.3d 220.—Neglig 202.

C.A.6 (Ohio) 1974. Actionable “negligence” does not consist of failing to take extraordinary measures which hindsight demonstrates would have been helpful; it consists of doing what a reasonable man would not do or failing to do what a reasonable man would do under the circumstances confronting him.—*Bibler v. Young*, 492 F.2d 1351, 71 O.O.2d 154, certiorari denied 95 S.Ct. 309, 419 U.S. 996, 42 L.Ed.2d 269.—Neglig 233.

C.A.3 (Pa.) 1979. “Negligence” is conduct which falls below standards established by law for protection of others against unreasonable risk of harm and the risk necessarily involves a recognizable danger.—*U.S. v. Ohio Barge Lines, Inc.*, 607 F.2d 624, appeal after remand 796 F.2d 685.—Neglig 233.

C.A.3 (Pa.) 1966. “Negligence” is failure to exercise “due care,” and this means due care under the circumstances of the particular situation.—*Rodriguez v. Brunswick Corp.*, 364 F.2d 282.—Neglig 231.

C.A.3 (Pa.) 1950. Recovery under Jones Act by administrator from shipowner for death of seaman could be predicated only upon “negligence”, which meant a failure by shipowner to observe degree of care required under the circumstances. *Jones Act*, 46 U.S.C.A. § 688.—*Potter Title & Trust Co. v. Ohio Barge Line*, 184 F.2d 432, certiorari denied 71 S.Ct. 567, 340 U.S. 955, 95 L.Ed. 689.—*Seamen* 29(1).

C.A.1 (Puerto Rico) 1966. The words “fault” and “negligence” within Puerto Rican statute providing that person who by act or omission causes damage to another through “fault or negligence” shall be obliged to repair the damage so done are not synonymous, and hence statute is broad enough to include right of action for wrongful death based on unseaworthiness. 31 L.P.R.A. § 5141.—*Compania Trasatlantica Espanola, S. A. v. Melendez Torres*, 358 F.2d 209.—*Ship* 84(1).

C.A.4 (S.C.) 1952. “Negligence” is the breach of a duty the nature and extent of which varies with circumstances, but primarily with the relationship between the party injuring and the party who is injured.—*U.S. v. Folk*, 199 F.2d 889.—Neglig 214.

C.A.6 (Tenn.) 1951. A failure to take special precaution against the danger that is only remotely possible is not “negligence.”—*Union Ry. Co. v. Williams*, 187 F.2d 489, certiorari denied 72 S.Ct. 65, 342 U.S. 839, 96 L.Ed. 634.—Neglig 213.

C.A.5 (Tex.) 1972. Under Texas law, “negligence” means failure to do that which a person of ordinary prudence, in exercise of ordinary care, would do under same or similar circumstances, or the doing of that which a person of ordinary prudence in exercise of ordinary care would not do under the same or similar circumstances.—*U. S. for Use and Benefit of Contractors Equipment Co. v. Trinity Universal Ins. Co.*, 457 F.2d 950.—Neglig 232.

C.A.4 (Va.) 1999. Under common-law principles, “negligence” is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; the risk included in this definition is one that is reasonably foreseeable. *Restatement (Second) of Torts* § 282.—*Hernandez v. Trawler Miss Vertie Mae, Inc.*, 187 F.3d 432.—Neglig 202, 213.

C.A.9 (Wash.) 1990. “Reckless conduct” that may be sufficient to meet scienter requirement in action under Securities Exchange Act § 10(b) and Rule 10b-5 is highly unreasonable omission involving not merely simple, or even excusable, “negligence”, but extreme departure from standards of ordinary care which presents danger of misleading buyers or sellers and which is known to defendant or is so obvious that defendant must have been aware of it; “flexible duty standard” should not be used. *Securities Exchange Act of 1934*, § 10(b), 15 U.S.C.A. § 78j(b).—*Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, rehearing denied, certiorari denied 111 S.Ct. 1621, 499 U.S. 976, 113 L.Ed.2d 719.—*Sec Reg* 60.45(1).

C.A.9 (Wash.) 1979. In enacting the Longshoremen’s and Harbor Workers’ Compensation Act, Congress did not intend to use the word “negligence” in its common-law sense. Longshoremen’s and Harbor Workers’ Compensation Act, § 1 et seq., 33 U.S.C.A. § 901 et seq.—*Bachtel v. Mammoth Bulk Carriers, Ltd.*, 605 F.2d 438, certiorari granted, vacated 101 S.Ct. 2301, 451 U.S. 978, 68 L.Ed.2d 835, certiorari granted, vacated *Twin Harbors Stevedoring Co. v. Bachtel*, 101 S.Ct. 2301, 451 U.S. 978, 68 L.Ed.2d 835.—*Ship* 84(2).

Ct.Cl. 1951. “Negligence” may consist of a failure to use care in inspecting premises upon which servants are employed, or in supervising their conduct.—*Wright v. U.S.*, 95 F.Supp. 943, 118 Ct.Cl. 576.—*Emp Liab* 55, 70.

C.C.A.8 1944. Where income tax deficiency found to exist resulted from claimed deductions not allowed and from failure to report gains from a trading account and dividends paid to a broker and resulted from taxpayer’s mistaken conception of his legal rights, imposition of 5 per cent penalty under statute providing penalty for “negligence” was not justified. *Revenue Act 1936*, § 293, 26 U.S.C.A. (I.R.C.1939) § 293.—*Bennett v. Commissioner of Internal Revenue*, 139 F.2d 961.—*Int Rev* 5219.

C.C.A.10 1936. "Negligence" and "wilfulness" are mutually exclusive terms. "Negligence" is negative in its nature, implying the omission of duty and excludes the idea of wilfulness. "Negligence" involves the absence of willful injury and is an unintended breach of duty resulting in injury to the property or person of another. "Negligence" and "wilfulness" are the opposite of each other, and indicate radically different mental states. Taxpayer who, while motoring at night to procure workman to repair building, collided with automobile, which collision resulted in litigation and loss to taxpayer not covered by insurance held entitled to deduction of such loss under finding of Board of Tax Appeals that damages resulted from taxpayer's "negligent" driving of his automobile. Revenue Act 1928, § 23 (e) (1), 26 U.S.C.A. §§ 161, 211 note.—*Anderson v. Commissioner of Internal Revenue*, 81 F.2d 457, 104 A.L.R. 676.

C.C.A.5 (Ala.) 1944. Omission of duty is "negligence".—*Callaway v. Hart*, 146 F.2d 103, certiorari denied 65 S.Ct. 915, 324 U.S. 866, 89 L.Ed. 1421.—*Neglig* 250.

C.C.A.5 (Ala.) 1938. In Alabama, cases in which a party is sought to be charged on ground that he has caused a way or other place to be encumbered or suffered it to be in a dangerous condition, causing accident and injury, turn on the principle that "negligence" consists in doing or omitting to do an act by which a legal duty or obligation has been violated.—*Wunderlich v. Franklin*, 100 F.2d 164, certiorari denied 59 S.Ct. 834, 307 U.S. 631, 83 L.Ed. 1514.—*Autos* 290; *Neglig* 250, 1086.

C.C.A.8 (Ark.) 1947. Under the Federal Employers' Liability Act, employer's liability is to be determined under the general rule which defines "negligence" as the lack of due care under the circumstances, or failure to do what a reasonable and prudent man would ordinarily have done under the circumstances or doing what such a person under the circumstances would not have done. Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51.—*Wolfe v. Henwood*, 162 F.2d 998, certiorari denied 68 S.Ct. 88, 332 U.S. 773, 92 L.Ed. 357.—*Emp Liab* 14.

C.C.A.8 (Colo.) 1925. "Negligence" and "fraud" distinguished. Negligence and fraud are not identical, either in their nature or effect, since "negligence" is the absence of proper attention to duty, while, "fraud" is always a positive and willful device, resorted to with intent to in some manner injure another, in which the mind concurs with the act.—*Greeley Nat. Bank v. Wolf*, 4 F.2d 67.—*Fraud* 1.

C.C.A.8 (Colo.) 1925. "Negligence" and "fraud" distinguished.—*Greeley Nat. Bank v. Wolf*, 4 F.2d 67.—*Fraud* 1.

C.C.A.5 (Fla.) 1941. Ordinary "negligence" is failure to exercise that degree of care, precaution, and vigilance which an ordinarily prudent man would exercise, whereby and as a proximate consequence whereof the person or property of another

is injured.—*Hollander v. Davis*, 120 F.2d 131.—*Neglig* 232.

C.C.A.5 (Fla.) 1941. "Gross negligence" is a relative term which is to be understood as meaning a greater want of care than is implied from term ordinary "negligence", but circumstances of each particular case are to be taken into consideration, and what might merely be ordinary negligence under one set of circumstances or conditions might constitute gross negligence under other conditions or circumstances.—*Hollander v. Davis*, 120 F.2d 131.—*Neglig* 273.

C.C.A.7 (Ill.) 1942. Although intoxication of a motorist in and of itself does not constitute "negligence" rendering motorist liable for damages resulting from an automobile accident, it is a material element in the issue of negligence.—*Heald v. Milburn*, 125 F.2d 8, certiorari denied 62 S.Ct. 1267, 316 U.S. 681, 86 L.Ed. 1754, certiorari denied 62 S.Ct. 1268, 316 U.S. 681, 86 L.Ed. 1754.—*Autos* 157.

C.C.A.7 (Ill.) 1939. "Negligence" is the omission to do something which a reasonable person, guided upon those considerations which ordinarily regulate human conduct, would do, or doing something which a prudent and reasonable person would not do.—*Pickering v. Corson*, 108 F.2d 546.—*Neglig* 233.

C.C.A.7 (Ill.) 1937. The words "reckless" and "wanton" do not imply the same thing as "willful" or "intentional," but mean less than willfulness and nothing more than negligence. "Negligence" is negative in its nature, implying the omission of duty, and excludes the idea of wilfulness. Willful or intentional injury implies positive and aggressive conduct and not the mere negligent omission of duty.—*In re Wegner*, 88 F.2d 899.

C.C.A.7 (Ind.) 1941. The true test of actionable "negligence" is whether owner of premises under particular circumstances owed any duty to person injured on his premises, and if so, was such duty violated and did such violation result in the injury complained of.—*McClelland v. Baltimore & O.C.T.R. Co.*, 123 F.2d 734.—*Neglig* 1001, 1010, 1085.

C.C.A.8 (Iowa) 1941. An innkeeper's duty under law of Iowa, like duty of any proprietor of building to which public is invited, is to use reasonable care to keep premises safe for use of guests and patrons, which includes keeping halls and passageways free from hazards, and a violation of that duty constitutes "negligence".—*Fort Dodge Hotel Co. of Fort Dodge v. Bartelt*, 119 F.2d 253.—*Inn* 10.4.

C.C.A.5 (La.) 1940. Where damage to cargo of flour was caused by excessive bacterial activity, and not by taint or odors from beef casings stowed nearby, and bacterial content of the flour or its activity when flour was delivered to the carrier was not proved, stowing flour near beef casings did not make carrier liable for spoilage on theory of "negligence" or "deviation," notwithstanding finding that

such stowage was negligent.—*The Chester Valley*, 110 F.2d 592.—*Ship* 123(5).

C.C.A.5 (La.) 1940. "Negligence in the air" is not in law "negligence", but "negligence" is the absence of care according to the circumstances.—*The Chester Valley*, 110 F.2d 592.—*Neglig* 230.

C.C.A.8 (Minn.) 1936. Failure to make reasonable use of faculties of sight, hearing, and intelligence to discover danger to which one is or may become exposed generally constitutes "negligence".—*Phillips Petroleum Co. v. Miller*, 84 F.2d 148.—*Neglig* 506(6).

C.C.A.8 (Minn.) 1931. Power company's failure to guard against events which may reasonably be expected is "negligence," but failure to anticipate events occurring only under unusual circumstances is not "negligence". Gen.St.Minn.1923, § 7536.—*Interstate Power Co. v. Thomas*, 51 F.2d 964, 84 A.L.R. 681.—*Electricity* 14(1).

C.C.A.8 (Mo.) 1939. Actionable "negligence" consists in breach or non-performance of duty imposed by statute or common law which party charged with act or omission owes to one suffering loss or damage thereby.—*Hudson v. Moonier*, 102 F.2d 96, certiorari denied 59 S.Ct. 1037, 307 U.S. 639, 83 L.Ed. 1520, certiorari denied *Fitch v. Moonier*, 59 S.Ct. 1037, 307 U.S. 639, 83 L.Ed. 1520.—*Neglig* 250.

C.C.A.8 (Mo.) 1932. "Negligence," as applied to carriers, is failure to use highest degree of care which prudent man would observe in like business and under like circumstances to safely carry customers and enable them to alight safely.—*S. S. Kresge Co. v. McCallion*, 58 F.2d 931.—*Carr* 280(1).

C.C.A.1 (N.H.) 1941. Inaction as well as action may be "negligence".—*Public Service Co. of New Hampshire v. Elliott*, 123 F.2d 2.—*Neglig* 200.

C.C.A.2 (N.Y.) 1944. The word "negligence," as used in Jones Act making employer liable for negligence, must be given a liberal interpretation and includes any knowing or careless breach of any obligation which employer owes to seaman including obligation of seeing to safety of crew. Jones Act, 46 U.S.C.A. § 688.—*Koehler v. Presque-Isle Transp. Co.*, 141 F.2d 490, certiorari denied 64 S.Ct. 1288, 322 U.S. 764, 88 L.Ed. 1591.—*Seamen* 29(1).

C.C.A.2 (N.Y.) 1943. A legislative enactment, made for benefit of persons suffering loss, of a standard of due care is to be considered as controlling test of "negligence".—*Michelsen v. Penney*, 135 F.2d 409.—*Neglig* 238.

C.C.A.2 (N.Y.) 1939. The failure of tug captain taking command of vessel prior to docking thereof, to utilize another tug sent by towing company engaged by charterer to dock vessel, was "negligence," as respects liability for damage sustained when vessel struck pier.—*The West Eldara*, 101 F.2d 45, modified 104 F.2d 670, certiorari denied *McAllister Towing & Transportation Co v. Ameri-*

can Diamond Lines, 60 S.Ct. 144, 308 U.S. 607, 84 L.Ed. 507.—*Towage* 11(7).

C.C.A.6 (Ohio) 1947. Under Federal Employers' Liability Act, carrier's liability to employee is to be determined under general rule which defines "negligence" as lack of due care under circumstances, or failure to do what a reasonable and prudent man would ordinarily have done under circumstances, or doing what such a person under existing circumstances would not have done. Federal Employers' Liability Act, §§ 1–10, 45 U.S.C.A. §§ 51–60.—*Hutchins v. Akron, C. & Y.R. Co.*, 162 F.2d 189.—*Emp Liab* 14.

C.C.A.3 (Pa.) 1947. Liability under Federal Employers' Liability Act is within general rule defining "negligence" as lack of due care under circumstances, or failure to do what a reasonable and prudent man would ordinarily have done under circumstances, or doing what such a person under existing circumstances would not have done. Federal Employers' Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.—*Eckenrode v. Pennsylvania R. Co.*, 164 F.2d 996, certiorari granted 68 S.Ct. 790, 333 U.S. 866, 92 L.Ed. 1144, affirmed 69 S.Ct. 91, 335 U.S. 329, 93 L.Ed. 41.—*Emp Liab* 3.

C.C.A.3 (Pa.) 1947. "Negligence" in failing to take precautions requires existence of some danger toward which precautions should be directed.—*Eckenrode v. Pennsylvania R. Co.*, 164 F.2d 996, certiorari granted 68 S.Ct. 790, 333 U.S. 866, 92 L.Ed. 1144, affirmed 69 S.Ct. 91, 335 U.S. 329, 93 L.Ed. 41.—*Neglig* 200.

C.C.A.3 (Pa.) 1945. The maintenance of improperly ventilated living quarters for a member of a ship's company constitutes "negligence" within meaning of Jones Act. Jones Act, 46 U.S.C.A. § 688.—*Hiltz v. Atlantic Refining Co.*, 151 F.2d 159.—*Seamen* 29(1).

C.C.A.3 (Pa.) 1940. "Negligence" is any conduct, except conduct recklessly disregardful of interest of others, which falls below the standard established by law for protection of others against unreasonable risk of harm.—*Armit v. Loveland*, 115 F.2d 308.—*Neglig* 233.

C.C.A.3 (Pa.) 1940. It is immaterial to the question of "negligence" whether violated standard of conduct is established by statute or by the common law so long as it is established by either.—*Armit v. Loveland*, 115 F.2d 308.—*Neglig* 230, 259.

C.C.A.1 (R.I.) 1938. The difference between "negligence," ordinary or gross, and "willful and reckless conduct," is a difference in kind not of degree.—*M. & M. Transp. Co. v. Cochran*, 100 F.2d 207.—*Neglig* 275.

C.C.A.5 (Tex.) 1945. The terms "nuisance" and "negligence" are not synonymous, since liability for negligence is based on want of proper care, while one who creates or maintains certain types of nuisances may be liable for resulting injury regardless of the degree of care or skill exercised to avoid injury.—*King v. Columbian Carbon Co.*, 152 F.2d 636.—*Nuis* 7.

C.C.A.5 (Tex.) 1941. "Fault" in legal literature is the equivalent of "negligence."—*Continental Ins. Co. v. Sabine Towing Co.*, 117 F.2d 694, certiorari denied 61 S.Ct. 1111, 313 U.S. 588, 85 L.Ed. 1543.—Neglig 200.

M.D.Ala. 1997. Under Alabama law, "negligence," by definition, is not intentional tort: it includes only such conduct as creates liability for reason that it involves risk and not certainty of invading interest of another, and therefore excludes conduct which creates liability because of actor's intention to invade legally protected interest of person injured or of third person. Restatement (Second) of Torts § 282 comment.—*Allstate Indem. Co. v. Lewis*, 985 F.Supp. 1341.—Neglig 201.

D.Ariz. 1992. Elements of "negligence" and "strict liability" are the same with exception that, in negligence, plaintiff must show that defendant breached duty of due care and, in strict liability, plaintiff must show that product was unreasonably dangerous, although distinction lessens in failure to warn cases.—*Anguiano v. E.I. DuPont de Nemours and Co., Inc.*, 808 F.Supp. 719, affirmed 44 F.3d 806.—Prod Liab 6, 8, 14.

E.D.Ark. 1971. "Negligence" is the doing of something that a person of ordinary prudence would not have done in the same or similar circumstances or a failure to do something that the person of ordinary prudence would have done in the same or similar circumstances.—*Rhoads v. Service Mach. Co.*, 329 F.Supp. 367.—Neglig 232.

E.D.Ark. 1953. Where one is required to use the utmost care to prevent injury to property of others, the want of such care is "negligence."—*Bennett v. Texas-Illinois Gas Pipeline Co.*, 113 F.Supp. 788.—Neglig 230.

W.D.Ark. 1959. Under Arkansas law, "negligence" is the doing of that which an ordinary prudent person would not do under the circumstances, or failure to do that which an ordinary prudent person would do under circumstances.—*Dempsey v. U.S.*, 176 F.Supp. 75.—Neglig 232.

W.D.Ark. 1958. Under Arkansas law, "negligence" is the doing of that which an ordinary, prudent person would not do under the circumstances, or the failure to do that which an ordinary, prudent person would do under the circumstances.—*Johnson v. Stewart*, 163 F.Supp. 764.—Neglig 232.

W.D.Ark. 1953. "Negligence" is the failure to do that which a person of ordinary care and prudence would do under same or similar circumstances, or doing of something which a person of ordinary care and prudence would not have done under same or similar circumstances.—*Carroll v. Lanza*, 116 F.Supp. 491, affirmed in part, reversed in part 216 F.2d 808, certiorari granted 75 S.Ct. 113, 348 U.S. 870, 99 L.Ed. 685, reversed 75 S.Ct. 804, 349 U.S. 408, 99 L.Ed. 1183.—Neglig 232.

W.D.Ark. 1953. Under Arkansas law, "negligence" is failure to do that which person of ordinary care and prudence would do under same or similar circumstances, or the doing of which a

person of ordinary care and prudence would not do under the same or similar circumstances.—*Kisor v. Tulsa Rendering Co.*, 113 F.Supp. 10.—Neglig 232.

W.D.Ark. 1953. "Negligence", under Arkansas law, is the doing of something that a person of ordinary prudence would not do, or failure to do something that a person of ordinary prudence would do, under the same or similar circumstances.—*Insurance Co. of North America v. Saltzman*, 111 F.Supp. 694.—Neglig 232.

N.D.Cal. 1972. Under California law, "negligence" is either the omission of a person to do something which an ordinarily prudent person would have done under given circumstances, or the doing of something which an ordinarily prudent person would not have done under such circumstances; it is not absolute or to be measured in all cases in accordance with some precise standard, but always relates to some circumstance of time, place and reason.—*Sanbutch Properties, Inc. v. U.S.*, 343 F.Supp. 611.—Neglig 232.

S.D.Cal. 1957. "Negligence" in law means the doing of an act which a reasonable and prudent person would not do under the circumstances, or the failure to do what a reasonable and prudent person would do under the circumstances.—*Gemological Institute of America, Inc. v. Riddell*, 149 F.Supp. 128.—Neglig 233.

D.Colo. 1993. Under Colorado law, use of term "negligence" is not required for exculpatory agreement in order to shield party from claims based on negligence; inquiry is whether intent of parties was to extinguish liability and whether this intent was clearly and unambiguously expressed.—*Day v. Snowmass Stables, Inc.*, 810 F.Supp. 289.—Contracts 114.

D.Colo. 1982. Under Colorado law, "negligence" is deviation by defendant from reasonable standards of care owed to plaintiff, which naturally and foreseeably results in injury to plaintiff; it is failure to act as reasonably prudent person would under same or similar circumstances.—*McCormick v. U.S.*, 539 F.Supp. 1179.—Neglig 233.

D.D.C. 1965. Failure to use such care as would be used by prudent man under similar circumstances and conditions is "negligence" and, if negligence is proximate cause of injury to someone, injured party may recover from negligent person.—*Dempsey v. Addison Crane Co.*, 247 F.Supp. 584.—Neglig 233, 372.

D.Hawai'i 1993. "Negligence" is failure to use such care as reasonably prudent and careful person would use under similar circumstances.—*Wheelock v. Sport Kites, Inc.*, 839 F.Supp. 730.—Neglig 233.

D.Idaho 1992. "Negligence" involves foreseeability of injury, duty on part of defendant, breach of duty, and causal relationship between breach and injury.—*Phillips v. U.S.*, 801 F.Supp. 337, affirmed 15 F.3d 1088.—Neglig 202.

N.D.Ill. 1936. "Bad faith" differs from the negative idea of "negligence" in that it contemplates a state of mind affirmatively operating with a furtive

design or some motive of interest or ill will. It contains the element of intent to do wrong in some degree, actual or necessarily inferable. In contracts, it does not mean a breach of faith in the sense of a breach of an undertaking by failing to perform the undertaking. Such a failure approaches "negligence."—*Seelig v. First Nat. Bank*, 20 F.Supp. 61.

N.D.Iowa 1948. Negligence occasioned by an error in judgment is none the less "negligence."—*Van Wie v. U.S.*, 77 F.Supp. 22.—*Neglig 200*.

N.D.Iowa 1944. "Reckless", within Iowa automobile guest statute, means proceeding without heed of or concern for consequences, and it is more than "negligence". Code Iowa 1939, § 5037.10 (I.C.A. § 321.494).—*Russell v. Turner*, 56 F.Supp. 455, affirmed 148 F.2d 562.—*Autos 181(1)*.

S.D.Iowa 1994. Under Iowa law, "negligence" is generally defined as conduct that falls below standard established by law for protection of others against unreasonable risk of harm.—*Aetna Cas. and Sur. Co. v. Leo A. Daly Co.*, 870 F.Supp. 925.—*Neglig 233*.

S.D.Iowa 1990. Under Iowa law, "negligence" is conduct that falls below standard established by law for protection of others against unreasonable risk of harm.—*Pessagno v. U.S.*, 751 F.Supp. 149.—*Neglig 233*.

D.Kan. 1993. Distinction between "negligence" and "negligence per se" is means and method of ascertainment; negligence must be found by jury by evidence, while negligence per se results from violation of specific law or ordinance.—*H. Wayne Palmer & Associates v. Helder Industries, Inc.*, 839 F.Supp. 770.—*Neglig 200, 259, 1683*.

D.Kan. 1990. Under Kansas law, "negligence" is lack of due care and can be act of omission or commission.—*Nature's Share, Inc. v. Kutter Products, Inc.*, 752 F.Supp. 371.—*Neglig 231*.

E.D.Ky. 1933. Violation of Safety Appliance Act is "negligence" for which recovery may be had under Federal Employers' Liability Act (Federal Safety Appliance Act (45 USCA 1 et seq.); Federal Employers' Liability Act (45 USCA 51-59)).—*Summers v. Louisville & N.R. Co.*, 4 F.Supp. 410.—*Emp Liab 47*.

E.D.La. 1983. Under Louisiana law, "negligence" is conduct which falls below the standard established by law for protection of others against unreasonable risk of harm and it is the breach of a duty, statutory or nonstatutory, owed to another to protect the person from the particular harm that ensued.—*Breazeale v. B.F. Goodrich Co.*, 564 F.Supp. 1541.—*Neglig 202, 250*.

E.D.La. 1978. Four elements of a cause of action for "negligence" are a duty or obligation recognized by the law requiring the actor to conform to a certain standard of conduct for the protection of others against unreasonable risks, a failure on the actor's part to conform to the standard required, a reasonable close causal relation between the conduct and the resulting injury, i. e., "legal

cause" or "proximate cause", and actual loss or damages resulting to the interests of another.—*U.S. v. M/V Big Sam*, 454 F.Supp. 1144, on reconsideration 480 F.Supp. 290, affirmed in part, reversed in part 681 F.2d 432, rehearing denied 693 F.2d 451, certiorari denied 103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367, certiorari denied *Mission Ins. Co. v. U.S.*, 103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367, certiorari denied 103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367.—*Neglig 202*.

E.D.La. 1952. "Negligence" is the failure to exercise ordinary and reasonable care in the circumstances proved.—*Page v. U.S.*, 105 F.Supp. 99.—*Neglig 233*.

M.D.La. 1994. "Negligence" is generally defined as conduct which falls below standard established by law for protection of others against unreasonable risk of harm.—*Gross v. Exxon Corp.*, 885 F.Supp. 899.—*Neglig 233*.

W.D.La. 1964. "Fault" within Louisiana wrongful death statute providing that every act causing damage obliges one by whose fault it happened to repair it is more inclusive and comprehensive than the term "negligence" and includes failure to provide a seaworthy vessel. LSA-C.C. art. 2315.—*Grigsby v. Coastal Marine Service of Tex., Inc.*, 235 F.Supp. 97, cause remanded 412 F.2d 1011, on remand 317 F.Supp. 1113, certiorari dismissed *Fidelity & Casualty Co. v. Grigsby*, 90 S.Ct. 612, 396 U.S. 1033, 24 L.Ed.2d 531, certiorari dismissed 90 S.Ct. 612, 396 U.S. 1033, 24 L.Ed.2d 531, certiorari dismissed *Welders Supply Co. of Lake Charles v. Grigsby*, 90 S.Ct. 613, 396 U.S. 1033, 24 L.Ed.2d 531.—*Death 14(1)*.

W.D.La. 1942. "Negligence" is the breach of a legal duty or obligation, and it or the facts upon which it is based must be pleaded and proved.—*Lewis v. Thompson*, 47 F.Supp. 435.—*Neglig 250, 1537*.

D.Md. 1928. "Negligence" is omission to do that which reasonable man would do, or doing something he would not do. "Negligence" is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate conduct of human affairs, would do, or doing of something which such reasonable man would not do.—*The Richelieu*, 27 F.2d 960, modified *Corne v. Baltimore & O.R. Co.*, 48 F.2d 497, certiorari denied 52 S.Ct. 9, 284 U.S. 621, 76 L.Ed. 530.—*Neglig 233*.

D.Md. 1928. "Negligence" is omission to do that which reasonable man would do, or doing something he would not do.—*The Richelieu*, 27 F.2d 960, modified *Corne v. Baltimore & O.R. Co.*, 48 F.2d 497, certiorari denied 52 S.Ct. 9, 284 U.S. 621, 76 L.Ed. 530.—*Neglig 233*.

D.Mass. 1990. Under Massachusetts law, "negligence" is a person's failure, either by omission or by action, to exercise that degree of care, vigilance, and forethought in discharging a duty imposed upon him or her which a person of ordinary caution and prudence ought to exercise under the same

circumstances.—*Deguio v. U.S.*, 732 F.Supp. 1240, affirmed 920 F.2d 103.—*Neglig* 232.

D.Mass. 1982. "Negligence" is doing of something which reasonably prudent person in ordinary course of human events would not do or failure to do something which reasonable person of ordinary prudence would do; it is failure to use due care in management of one's person, property, or agency under one's control.—*Massachusetts Lobstermen's Ass'n, Inc. v. U.S.*, 554 F.Supp. 740.—*Neglig* 233.

E.D.Mich. 2000. Under Michigan law, "negligence" is conduct involving unreasonable risk of harm.—*Sanders v. Southwest Airlines Co.*, 86 F.Supp.2d 739.—*Neglig* 233.

E.D.Mich. 1944. "Negligence" is defined as a want of due care, and the failure to exercise that degree of care and caution which an ordinarily prudent person usually exercises under the same or similar circumstances.—*Kapp v. E.I. Du Pont De Nemours & Co.*, 57 F.Supp. 32.—*Neglig* 231.

W.D.Mich. 2000. For purposes of the Jones Act, "negligence" is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. *Jones Act*, 46 App.U.S.C.A. § 688 et seq.—*Rutherford v. Lake Michigan Contractors, Inc.*, 132 F.Supp.2d 592, on reconsideration in part, affirmed 28 Fed. Appx. 395, certiorari denied 122 S.Ct. 2359, 153 L.Ed.2d 181.—*Seamen* 29(1).

D.Minn. 1961. Under Minnesota law, "negligence" is failure to exercise reasonable care, which is such care as person of ordinary prudence would have exercised under same or similar circumstances.—*Peerless Ins. Co. v. Cerny & Associates, Inc.*, 199 F.Supp. 951.—*Neglig* 233.

N.D.Miss. 1969. Allowing third person to use instrumentality where actor knows or should know that such third person is likely to use instrumentality in way to create unreasonable risk of harm to another person is "negligence."—*Roberts v. Williams*, 302 F.Supp. 972, rescinded 456 F.2d 819, certiorari denied 92 S.Ct. 83, 404 U.S. 866, 30 L.Ed.2d 110.—*Neglig* 354.

E.D.Mo. 1938. "Negligence" is a failure to exercise ordinary care.—*Dutton v. Alligator Co.*, 25 F.Supp. 736, affirmed 109 F.2d 900.—*Neglig* 232.

W.D.Mo. 1997. For there to be actionable "negligence," plaintiff must plead and prove: (1) duty owed by defendant to protect plaintiff from injury complained; (2) failure to perform that duty; and (3) injury proximately caused by that failure.—*Midland Psychiatric Associates, Inc. v. U.S.*, 969 F.Supp. 543, affirmed 145 F.3d 1000.—*Neglig* 202.

W.D.Mo. 1953. "Negligence", by its nature, implies wrongful inadvertence, while "willful, wanton and reckless conduct" connotes some degree of wrongful, conscious intent.—*Harzfeld's, Inc. v. Otis Elevator Co.*, 116 F.Supp. 512.—*Neglig* 200, 275.

E.D.N.Y. 1996. Under New York law, "negligence" is conduct that falls beneath standard of care which would be exercised by reasonably prudent person in similar circumstances at time of

conduct at issue.—*Harper v. U.S.*, 949 F.Supp. 130.—*Neglig* 233.

E.D.N.Y. 1993. Acts of assault, rape, sodomy, and sexual abuse of minors allegedly perpetrated by insured could not be characterized as anything other than "intentional conduct" and thus coverage under homeowners' policy was excluded; actions could not be characterized as "negligence."—*Allstate Ins. Co. v. Oles*, 838 F.Supp. 46.—*Insurance* 2275, 2278(3).

E.D.N.Y. 1986. "Negligence" lacks the element of intention and does not require proof of scienter, but only a lack of due care.—*In re LILCO Securities Litigation*, 625 F.Supp. 1500.—*Fraud* 13(3).

E.D.N.Y. 1942. Where stand-by seaman stepped into trap door opening and was injured while approaching mate seated at table in master's saloon, failure of steward to close trapdoor, of chief officer to warn seaman, and of ship to provide adequate lighting, constituted "negligence", but absence of light imposed on seaman duty to exercise caution, and failure to exercise caution entitled seaman to a decree for half damages only against shipowner.—*Dervishoglu v. Boyazides*, 44 F.Supp. 385.—*Seamen* 29(4).

N.D.N.Y. 1995. "Negligence" is conduct which falls below standard established by law for protection of people against unreasonable risk.—*Burke v. Warren County Sheriff's Dept.*, 890 F.Supp. 133, reconsideration denied 916 F.Supp. 181.—*Neglig* 233.

S.D.N.Y. 1996. To state "negligence" claim under New York law, plaintiff must allege that defendant owed plaintiff cognizable duty of care, that defendant breached that duty, and that plaintiff was injured as proximate result of breach.—*Bonnie & Co. Fashions, Inc. v. Bankers Trust Co.*, 945 F.Supp. 693, reargument denied 170 F.R.D. 111.—*Neglig* 202.

S.D.N.Y. 1995. "Negligence," for purposes of Jones Act, is failure to exercise reasonable care to provide plaintiff with reasonably safe place to work, failure to provide plaintiff with reasonably safe conditions, tools or equipment, or failure in any other way to exercise reasonable care under the circumstances. *Jones Act*, 46 App.U.S.C.A. § 688.—*Lombas v. Moran Towing & Transp. Co., Inc.*, 899 F.Supp. 1089, affirmed 101 F.3d 685.—*Seamen* 29(1), 29(2).

S.D.N.Y. 1995. Absent notice by chart, buoy or otherwise that buried pipeline has become exposed and an obstruction to navigation, navigating vessel in pipeline area, in and of itself, presents no reasonably foreseeable risk of damaging pipeline and, thus, is not "negligence."—*Texas Eastern Transmission Corp. v. Tug Captain Dann*, 898 F.Supp. 198.—*Ship* 81(1).

S.D.N.Y. 1992. In order to establish cause of action for "negligence," plaintiff must show existence of duty flowing from defendant to plaintiff, breach of that duty, reasonably close causal connection between breach and resulting injury, and loss, harm, or damage.—*Perrin v. Hilton Intern., Inc.*,

797 F.Supp. 296, reargument denied 1992 WL 396221.—Neglig 202.

S.D.N.Y. 1966. Hazards presented by loose nuts and bolts scattered in and about area of ship's hold, which hazards were known or should have been known by officers and crew of vessel, constituted "negligence" on part of shipowner.—*Morales v. Dampskibs A/S Flint*, 264 F.Supp. 829, affirmed 370 F.2d 569.—Ship 84(3.2).

S.D.N.Y. 1957. The components of "negligence" of defendant in tort action are existence of duty of defendant toward plaintiff, breach of such duty, and proximate relationship between such breach and loss sustained by plaintiff.—*Russell, Poling & Co v. U S*, 151 F.Supp. 11, affirmed 252 F.2d 167.—Neglig 202.

S.D.N.Y. 1930. Omission to exercise degree of care which under circumstances is reasonably demanded for effective performance of duty constitutes "negligence."—*The City of Harvard*, 52 F.2d 461.—Neglig 233.

W.D.N.Y. 1946. Under Michigan law "negligence" is absence or want of care under the circumstances.—*Lauchert v. American S.S. Co.*, 65 F.Supp. 703.—Neglig 230.

W.D.N.Y. 1941. The words "neglect of such owner" within statute exempting owner of vessel and vessel from liability for damage by fire unless such fire is caused by the design or neglect of such owner mean personal negligence of the owner, or in case of a corporate owner, negligence of its managing officers or agents, and "negligence" of what in other connections is held to be a nondelegable duty, does not take away the exemption. 46 U.S.C.A. § 182.—*The Buckeye State*, 39 F.Supp. 344.—Ship 138.

E.D.N.C. 1969. Under North Carolina law, "negligence" is failure to exercise that degree of care for others' safety which an ordinarily prudent man under like circumstances would exercise.—*Tyndall v. U.S.*, 295 F.Supp. 448.—Neglig 232.

M.D.N.C. 1970. Under North Carolina law, "negligence" is the failure of one to exercise for the safety of others the degree of care which reasonably prudent man would exercise under like circumstances; negligence may consist of acts either of omission or commission.—*Sharpe v. Grindstaff*, 329 F.Supp. 405.—Neglig 233.

W.D.N.C. 1990. "Negligence" refers to a party's conduct and the failure to exercise ordinary care.—*Lindsay by Lindsay v. Public Service Co. of North Carolina, Inc.*, 732 F.Supp. 623, affirmed 924 F.2d 1052.—Neglig 232.

W.D.N.C. 1955. "Negligence" is a failure to exercise that care which a reasonably prudent person would exercise under the same or similar circumstances.—*Radford v. West*, 133 F.Supp. 409.—Neglig 233.

W.D.N.C. 1951. "Negligence" is failure to exercise that care which a reasonably prudent person would exercise under same or similar circumstances, and is further the omission to do something

which a reasonable man would do, or something which a provident and reasonable man would not do.—*Smith v. U.S.*, 94 F.Supp. 681.—Neglig 233.

N.D.Ohio 1984. "Negligence" is lack of ordinary care; it is failure to exercise that degree of care which reasonably prudent person would have exercised under same or similar circumstances.—*Invacare Corp. v. Sperry Corp.*, 612 F.Supp. 448.—Neglig 232.

N.D.Ohio 1967. "Negligence" is act or omission in violation of duty to exercise ordinary care by reason of which injury to person or property occurs.—*Sayre v. U.S.*, 282 F.Supp. 175, 18 Ohio Misc. 23, 45 O.O.2d 289, 47 O.O.2d 43.—Neglig 232.

N.D.Ohio 1951. "Negligence" is the failure to do what a reasonable and prudent man would ordinarily have done under the circumstances of the situation; or doing what such a person under the existing circumstances would not have done.—*McDonough v. Buckeye S. S. Co.*, 103 F.Supp. 473, affirmed 200 F.2d 558, certiorari denied 73 S.Ct. 785, 345 U.S. 926, 97 L.Ed. 1357.—Neglig 233.

N.D.Ohio 1942. If city of Cleveland while engaged in its statutory function of caring for bridges, aqueducts and viaducts caused an obstruction to be placed in navigable river and left it there without properly marking it so as to warn navigators of danger of its presence, city was guilty of "negligence" and could be held liable for a "maritime tort". Gen.Code Ohio, § 3714.—*Kelley Island Lime & Transport Co. v. City of Cleveland*, 47 F.Supp. 533, 25 O.O. 162.—Nav Wat 19.

N.D.Ohio 1942. The mere placing of an obstruction in a navigable stream without warning, in and of itself, constitutes "negligence" and gives rise to liability upon happening of injury resulting from the obstruction.—*Kelley Island Lime & Transport Co. v. City of Cleveland*, 47 F.Supp. 533, 25 O.O. 162.—Nav Wat 26(3).

D.Or. 1984. Any representations of the Department of Health and Human Services, that state would be reimbursed for administrative costs relating to its aid to families with dependent children-foster care program, were more in nature of "negligence" than "affirmative misconduct," so that Department was not thereby estopped from denying state's claim for federal reimbursement. Social Security Act, § 403(a)(3), as amended, 42 U.S.C.A. § 603(a)(3); § 2002(a)(1), as amended, 42 U.S.C.(1976 Ed.) § 1397a(a)(1).—*State of Or., Dept. of Human Resources v. Heckler*, 651 F.Supp. 6.—Estop 62.2(4).

D.Or. 1958. "Unseaworthiness" is a failure to supply and keep in order the proper appliances pertinent to the ship, while "negligence" is lack of due care with respect to the navigation and management of the vessel.—*Lewis v. Maritime Overseas Corp.*, 163 F.Supp. 453.—Ship 80, 81(1).

E.D.Pa. 1973. "Negligence" is the failure to do what is reasonable under the circumstances or the doing of an act which is unreasonable under the circumstances.—*Sowicz v. U.S.*, 368 F.Supp. 1165,

affirmed 505 F.2d 731, affirmed *U.S. v. Northern Metal Company*, 505 F.2d 731.—Neglig 233.

E.D.Pa. 1967. Generally, "negligence" is doing of some act which reasonably prudent person would not do.—*Rapp v. Eastern Air Lines, Inc.*, 264 F.Supp. 673, vacated *Frankenfield v. U.S.*, 521 F.2d 1398, vacated 521 F.2d 1399, vacated *Scott v. U.S.*, 521 F.2d 1399.—Neglig 233.

E.D.Pa. 1955. "Negligence" is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or the doing something which a prudent and reasonable man would not do.—*Barker v. City of Philadelphia*, 134 F.Supp. 231.—Neglig 233.

E.D.Pa. 1941. A claim for damages for injuries sustained as the result of negligence is a separate cause of action which does not affect the right or claim of a seaman for maintenance and cure under the general maritime law, since action for "negligence" is based exclusively on tort, whereas a claim for "maintenance and cure" arises out of contract of employment independent of any consideration of negligence or culpability. *Jones Act*, 46 U.S.C.A. § 688.—*The W. H. Hoodless*, 38 F.Supp. 432.—*Seamen 11(9)*, 29(5.1).

E.D.Pa. 1940. "Negligence" is failure to use that degree of care which one of ordinary intelligence and prudence might be expected to use in the particular circumstances.—*Beck v. Wings Field*, 35 F.Supp. 953, reversed 122 F.2d 114.—Neglig 232.

E.D.Pa. 1939. There is a distinction between "negligence" and "actionable negligence" in that negligence which does not contribute to damage sustained is "negligence" but not "actionable negligence."—*Murphy v. Hutzel*, 27 F.Supp. 473.—Neglig 200.

M.D.Pa. 1955. "Negligence" is absence or want of care which reasonable man would exercise under circumstances.—*Gallagher v. Delaware & H. R. Corp.*, 130 F.Supp. 35.—Neglig 233.

M.D.Pa. 1943. Failure to anticipate negligence is not itself "negligence."—*Mann v. Funk*, 50 F.Supp. 305, affirmed 141 F.2d 260.

W.D.Pa. 1949. "Negligence" is a departure from the normal or what should be the normal, and is a failure to conform to standard of what a reasonably prudent man would ordinarily have done under the circumstances, or is doing what such man would not have done under the circumstances.—*Moran v. Pittsburgh-Des Moines Steel Co.*, 86 F.Supp. 255, reversed 183 F.2d 467.—Neglig 233.

W.D.Pa. 1940. "Negligence" is the failure to exercise that care, under the circumstances, which reasonably careful and prudent people would exercise under like circumstances.—*Caldwell v. Sears-Roebuck & Co.*, 31 F.Supp. 888.—Neglig 233.

D.Puerto Rico 1996. Under Puerto Rico law, "negligence" is defined as failure to exercise prudence required in social relations which, if exercised, could have avoided unlawful and unwanted

result.—*Rayzor v. U.S.*, 937 F.Supp. 115, affirmed 121 F.3d 695.—Neglig 233.

D.R.I. 1934. "Negligence" is the failure to do what a reasonable and prudent person would ordinarily have done under circumstances of situation, or doing what such a person under existing circumstances would not have done.—*Federal Ins. Co. v. Herreshoff Mfg. Co.*, 6 F.Supp. 827.

D.S.C. 1995. Under South Carolina law, "negligence" is failure to do what reasonable and prudent person would ordinarily have done under circumstances of situation, or doing what such person, under existing circumstances, would not have done, and "recklessness" is conduct where actor is in fact consciously aware that he is acting negligently; whether individual has acted negligently on particular occasion is determined from objective perspective of reasonableness under circumstances.—*Roberts v. City of Forest Acres*, 902 F.Supp. 662.—Neglig 233, 274.

D.S.C. 1994. Under South Carolina law, "negligence" is the failure to use "due care," which is that degree of care which person of ordinary prudence and reason would exercise under same circumstances.—*Epps v. U.S.*, 862 F.Supp. 1460.—Neglig 231.

E.D.Tenn. 1962. "Negligence" is lack of due care under the circumstances, or failure to do what a reasonable and prudent man would have done under the circumstances, or doing what such a person under the circumstances would not have done. *Federal Employers' Liability Act*, § 1 et seq. as amended 45 U.S.C.A. § 51 et seq.—*Rubley v. Louisville & N. R. Co.*, 208 F.Supp. 798.—Neglig 233.

E.D.Tenn. 1943. "Negligence" consists in conduct and not what may have caused such conduct.—*Kirby v. Turner-Day & Woolworth Handle Co.*, 50 F.Supp. 469.—Neglig 200.

N.D.Tex. 1998. In context of section of the Internal Revenue Code imposing 20% of underpayment as penalty when taxpayer acted negligently or with disregard of rules or regulations, "negligence" includes any failure to make reasonable attempt to comply with Code provisions, and "disregard" includes any careless, reckless, or intentional disregard. 26 U.S.C.A. § 6662(b)(1), (c).—*In re Starnes*, 231 B.R. 903.—Int Rev 5217.70, 5219.

N.D.Tex. 1992. Income tax return preparer's failure to inquire into information provided by taxpayer may constitute "negligence" if information supplied would lead reasonable, prudent preparer to seek additional information.—*U.S. v. Bailey*, 789 F.Supp. 788.—Int Rev 5219.60.

W.D.Tex. 1993. "Negligence," for purposes of medical malpractice action under Texas law, means failure to exercise that degree of skill and care ordinarily employed under same or similar circumstances by other practitioners in field in same or similar communities.—*Portillo v. U.S.*, 816 F.Supp. 444, affirmed 29 F.3d 624.—Health 620.

E.D.Va. 1996. "Negligence" under maritime law is simply the failure to use reasonable care under circumstances; "unseaworthiness" is similar to negligence, but relates to condition of vessel which renders it unfit for its intended purpose.—National Shipping Co. of Saudi Arabia (NSCSA) v. Moran Mid-Atlantic Corp., 924 F.Supp. 1436, affirmed National Shipping Co. of Saudi Arabia v. Moran Trade Corp. of Delaware, 122 F.3d 1062, certiorari denied 118 S.Ct. 1301, 523 U.S. 1021, 140 L.Ed.2d 467.—Ship 79, 80.

E.D.Wash. 1943. Under Washington law, the victim of an accident is entitled to have his conduct judged by circumstances surrounding him at the time of accident by the conditions as they appeared to one in his then situation, and, if his conduct when so judged appears to be that of a reasonably prudent person, he cannot be said to be guilty of "negligence".—Robison v. Northern Pac. Ry. Co., 49 F.Supp. 632, reversed 143 F.2d 352, certiorari denied 65 S.Ct. 310, 323 U.S. 788, 89 L.Ed. 629.—Neglig 503.

S.D.W.Va. 1940. To constitute actionable "negligence," there must be not only a lack of care, but such lack of care must involve a breach of some duty owed to a person who is injured in consequence of such breach.—Crab Orchard Imp. Co. v. Chesapeake & O. Ry. Co., 33 F.Supp. 580, affirmed 115 F.2d 277, certiorari denied 61 S.Ct. 807, 312 U.S. 702, 85 L.Ed. 1135.—Neglig 250.

E.D.Wis. 1978. Where in suit by Federal Deposit Insurance Corporation against former directors of failed bank to recover damages for their alleged actions in permitting bank officers to make improper loans, allegations of complaint relating to breach of directors' fiduciary duty included all necessary elements for negligence, and where directors' and officers' liability insurance policy covered negligence, cause of action stated by complaint was one for "negligence" and, under Wisconsin's direct action statute, directors' and officers' liability insurer was properly joined as defendant; likewise, direct action statute was not limited to suits involving recovery for physical damage to property only, and to extent complaint alleged that bank was damaged and suffered from actual losses due to wrongful acts of directors, suit was one involving claim for "injury to property" within direct action statute's meaning. Fed.Rules Civ.Proc. rule 12(b)(6), (f), 28 U.S.C.A.; Federal Deposit Insurance Act, § 2[B], 12 U.S.C.A. § 1823(e); W.S.A. 632.24, 803.04(2).—Federal Deposit Ins. Corp. v. MGIC Indem. Corp., 462 F.Supp. 759.—Insurance 3542.

Bkrty.W.D.Ark. 2001. "Negligence" is the failure to do something that a reasonably careful person would do; negligent act arises out of situation in which an ordinarily prudent person in same circumstances would foresee such appreciable risk of harm to others that he would not act, or at least would act in more careful manner.—In re NWFX, Inc., 267 B.R. 118.—Neglig 202.

Bkrty.D.Minn. 1994. Chapter 11 debtor-taxpayer's failure to timely pay and to timely file state income tax returns was not due to "negligence" or

"intentional disregard" and did not warrant imposition of penalties under Minnesota law, where debtor, due to his quadriplegia, could not perform physical act of filing his tax returns himself and his bookkeeper's failure to follow through was circumstance beyond debtor's control. Minn.St.1988, § 290.53(3)(a).—Erickson v. C.I.R., 172 B.R. 900.—Tax 1103.

Bkrty.E.D.Va. 1991. "Negligence" is characterized as mere thoughtlessness or inadvertence or simple inattention.—In re Woolley, 145 B.R. 830.—Neglig 200.

Ala. 1995. "Negligence" is failure to do what reasonably prudent person would have done under same or similar circumstances, or doing of something that reasonably prudent would not have done under same or similar circumstances.—Ford Motor Co. v. Burdeshaw, 661 So.2d 236.—Neglig 233.

Ala. 1978. "Negligence" is the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or the doing of something which a reasonably prudent person would not have done under the same or similar circumstances.—Elba Wood Products, Inc. v. Brackin, 356 So.2d 119.—Neglig 233.

Ala. 1969. "Negligence" is the failure to do what reasonably prudent person would have done under same or similar circumstances, or, the doing of something which reasonably prudent person would not have done under same or similar circumstances.—Sanders v. Scarvey, 224 So.2d 247, 284 Ala. 215.—Neglig 233.

Ala. 1968. "Negligence" is not synonymous with "incompetency", nor is "competency" synonymous with "prudence", for the most competent may be negligent, and the incompetent may under the circumstances have been prudent.—Dean v. Johnston, 206 So.2d 610, 281 Ala. 602.—Neglig 200.

Ala. 1950. "Negligence" is the omission to do something which a reasonable man, guided by considerations which ordinarily regulate conduct of human affairs and concerned only with reasonable probabilities, would do, or the doing of something which he would not do.—Weston v. National Mfrs. & Stores Corp., 45 So.2d 459, 253 Ala. 503.—Neglig 233.

Ala. 1948. "Negligence" is not synonymous with "incompetency", and the most competent may be negligent, but one who is habitually negligent may on that account be "incompetent".—McGowin v. Howard, 36 So.2d 323, 251 Ala. 204.—Neglig 200.

Ala. 1948. "Negligence" in operation of a motor vehicle is want of ordinary care, or the doing of what a person of ordinary prudence would not do, or failure to do what a person of ordinary prudence would do under like conditions.—McGough Bakeries Corp. v. Reynolds, 35 So.2d 332, 250 Ala. 592.—Autos 146.

Ala. 1947. The words "heedlessly" or recklessly" are not repugnant to "wantonly" and do not always mean simply "negligence".—Brooks v. Liebert, 33 So.2d 321, 250 Ala. 142.

Ala. 1945. Actionable "negligence" is neglect of a legal duty.—*Moseley v. Alabama Power Co.*, 21 So.2d 305, 246 Ala. 416.—Neglig 250.

Ala. 1942. It is "negligence" for servant or agent, intrusted by master with superintendence of work and other employees engaged therein, to create or allow existence of such conditions in respect to work and men under him as will render accident probable, even through means of intervening agency, which due care on his part might have foreseen.—*Belcher v. Chapman*, 7 So.2d 859, 242 Ala. 653.—Emp Liab 107.

Ala. 1942. "Negligence" as basis of liability under homicide statute for death of child struck by an automobile while crossing a street was want of ordinary care, the doing of what a person of ordinary prudence would not do, or the failure to do what a person of ordinary prudence would do under like conditions or circumstances, which act or omission proximately causes the result complained of, and the circumstances of each case dictate the course of conduct demanded by ordinary care. Code 1940, Tit. 7, § 123.—*Conner v. Foregger*, 7 So.2d 856, 242 Ala. 275.—Autos 162(5), 201(1.1).

Ala. 1941. A pedestrian is not as a matter of law guilty of contributory negligence in taking the less safe way, known to be available, if in the exercise of ordinary care, he could take either way, and "negligence", which is the want of ordinary care, is the determining factor in such case.—*City of Birmingham v. White*, 5 So.2d 464, 242 Ala. 211.—Mun Corp 807(1), 821(26).

Ala. 1941. The failure to exercise reasonable diligence to discover danger is at most "negligence", while "wantonnness" contains the element of consciousness of probable danger as an existing fact.—*Francis v. Imperial Sanitary Laundry & Dry Cleaning Co.*, 2 So.2d 388, 241 Ala. 327.—Neglig 275.

Ala. 1940. In action against driver and owner of automobile for injuries sustained by child pedestrian, the court, in oral charge, correctly defined "negligence" as failure to exercise reasonable care, being that care which a person of ordinary prudence would exercise under like circumstances or conditions.—*Streetman v. Bowdon*, 194 So. 831, 239 Ala. 359.—Autos 246(5).

Ala. 1940. As regards application of rule, which casts upon injured party the duty to minimize damages when he may reasonably do so, to personal injury actions, "negligence" is the failure of plaintiff to take such ordinary care, in keeping with medical and surgical advice, as a reasonably prudent person would, under like circumstances.—*City of Birmingham v. Comer*, 194 So. 498, 239 Ala. 152.—Damag 62(2).

Ala. 1936. In passenger's action for injuries against carrier, passenger has burden of proof to show "negligence".—*Mosley v. Teche Lines*, 166 So. 800, 232 Ala. 110.—Carr 316(1).

Ala. 1935. "Negligence" is the omission to do something which a reasonable man, guided by considerations which ordinarily regulate conduct of

human affairs and concerned only with reasonable probabilities, would do, or the doing of something which he would not do.—*City of Birmingham v. Latham*, 162 So. 675, 230 Ala. 601.—Neglig 233.

Ala. 1934. Passenger injured on elevator has burden of showing "negligence," or want of high degree of care imposed on operator, as proximate cause.—*Ensley Holding Co. v. Kelley*, 158 So. 896, 229 Ala. 650.—Carr 316(10).

Ala. 1933. "Negligence" covers any want of due care after discovery of peril and which proximately causes injury, while "wanton conduct" requires conscious disregard of duty in the presence of the known danger. Evidence which would sustain count for wantonness would also sustain count for negligence after discovery of peril, and evidence which would not warrant reasonable inference of causal negligence, would not warrant inference of wanton injury.—*DeBardeleben v. Western Ry. of Alabama*, 151 So. 56, 227 Ala. 553.

Ala. 1930. Whether defendant is guilty of "negligence" is judged by conduct of reasonably prudent person under like circumstances.—*Morgan Hill Paving Co. v. Fonville*, 130 So. 807, 222 Ala. 120.—Neglig 233.

Ala. 1929. "Negligence" is failure of duty or want of care, and may result from omission or commission.—*Baker v. Baker*, 124 So. 740, 220 Ala. 201.—Neglig 200.

Ala. 1928. Failure of physician to exercise reasonable and ordinary skill and diligence of physicians in same neighborhood is "negligence".—*Thaggard v. Vafes*, 119 So. 647, 218 Ala. 609.—Health 620.

Ala. 1926. Walking near ditch along sidewalk and falling in would not be "negligence" proximately contributing to death by contact with live wire not known to be down.—*Wright v. J.A. Richards & Co.*, 108 So. 610, 214 Ala. 678.—Electricity 18(1).

Ala. 1915. An instruction in an action for injuries to a pedestrian struck by a street car held to correctly define "negligence," abstractly.—*Birmingham Ry., Light & Power Co. v. Bason*, 68 So. 49, 191 Ala. 618.—Urb R R 30.

Ala. 1915. An instruction in an action for injuries to a pedestrian struck by a street car which defines "negligence" as the doing of some act, or the failure to do some act, which an ordinarily prudent person under like circumstances would or would not have done, correctly defines "negligence," but does not assume to define "negligent liability," which must involve additional factors not comprehended in the abstract definition.—*Birmingham Ry., Light & Power Co. v. Bason*, 68 So. 49, 191 Ala. 618.

Ala. 1914. "Negligence" is not synonymous with "incompetency," and a single instance of a servant's negligence will not prove him incompetent nor charge his master with knowledge of his incompetency.—*Alabama City, G. & A. Ry. Co. v. Bessiere*, 66 So. 805, 190 Ala. 59.—Mast & S 303.

Ala. 1913. Ordinary care is that care which ordinarily prudent persons would exercise under the same or similar circumstances, and a want of that care is "negligence."—*Travis v. Louisville & N.R. Co.*, 62 So. 851, 183 Ala. 415.

Ala. 1910. "Negligence" may result from omission respecting duty.—*Randle v. Birmingham Ry., Light & Power Co.*, 53 So. 918, 169 Ala. 314.

Ala. 1910. "Negligence" may consist in the omission to act as well as in acting.—*Lewy Art Co. v. Agricola*, 53 So. 145, 169 Ala. 60.

Ala. 1909. "Negligence" is "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do." A reasonable man can be guided only by a reasonable estimate of probabilities.—*Southern Ry. Co. v. Carter*, 51 So. 147, 164 Ala. 103.

Ala. 1909. "Negligence" must depend on a duty owed by one person to another which is negligently performed.—*Southern Ry. Co. v. Smith*, 50 So. 390, 163 Ala. 174.—*Neglig* 210.

Ala. 1908. Assuming the existence of a duty, and where only ordinary care is required, "negligence" is properly defined as the failure to do what an ordinarily prudent person would have done under the circumstances, or the doing of that which an ordinarily prudent person would not have done.—*Alabama City, G. & A. Ry. Co. v. Bullard*, 47 So. 578, 157 Ala. 618.

Ala. 1907. "Negligence" excludes the idea of intention. A count in a complaint alleging that defendant was a common carrier, and that it so negligently conducted its business that by reason of such negligence plaintiff's intestate, who was a passenger on one of its trains, received personal injuries which caused his death, states a cause of action for simple negligence.—*Louisville & N. R. Co. v. Perkins*, 44 So. 602, 152 Ala. 133.

Ala.Civ.App. 2001. To prove "negligence," a plaintiff must establish: (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached that duty; (3) that the plaintiff was damaged or injured, and (4) that the defendant's breach of duty proximately caused the damage or injury to the plaintiff.—*Banks v. SCI Alabama Funeral Services, Inc.*, 801 So.2d 20.—*Neglig* 202.

Ala.Civ.App. 1996. "Negligence" is not synonymous with "incompetency," for purposes of negligent supervision claim, and single instance of negligence will not prove employee to be incompetent, nor will it impute knowledge to employer of incompetency; the most competent employee may be negligent.—*Collins v. Wilkerson*, 679 So.2d 1100, rehearing denied, and certiorari denied.—*Mast & S* 303.

Ala.App. 1918. "Negligence" consists in the doing of an act or the omission of an act which results in damage but without the intent to do wrong or

damage.—*Louisville & N.R. Co. v. Harrison*, 80 So. 683, 16 Ala.App. 609.—*Neglig* 201.

Ala.App. 1911. One lawfully using electricity to operate a street railroad system in a city must exercise such constant care as a man of reasonable prudence would exercise, considering the obligation to protect persons from danger, and the care must be commensurate with the danger; "negligence" consisting in the want of proper care, in view of the circumstances.—*Birmingham Ry., Light & Power Co. v. Murphy*, 56 So. 817, 2 Ala.App. 588.—*Electricity* 14(1).

Alaska 1991. "Negligence," in the attorney misconduct context, is failure to be aware of substantial risk that circumstances exist or that result will follow, which failure is deviation from standard of care that reasonable lawyer would exercise in the situation.—*Inquiry Concerning a Judge*, 822 P.2d 1333.—*Atty & C* 44(1).

Ariz. 1968. "Negligence" is failure to act as a reasonable and prudent person would act in like circumstances.—*Morris v. Ortiz*, 437 P.2d 652, 103 Ariz. 119, 35 A.L.R.3d 747.—*Neglig* 233.

Ariz. 1963. Duty established by foreseeability of harm to another is an element of "negligence."—*Rosendahl v. Tucson Medical Center*, 380 P.2d 1020, 93 Ariz. 368.—*Neglig* 213.

Ariz. 1958. Inverse eminent domain is neither an "action in contract" nor in "negligence" within statutes providing that persons having claims on contract or for negligence against state which have been disallowed may bring an action and requiring plaintiff to file a bond securing costs if plaintiff fails to recover, and hence actions for damages for taking and damaging of certain property were maintainable notwithstanding plaintiffs did not comply with such statutes in that they neither filed claims nor posted bonds. A.R.S. §§ 12-821, 12-823; A.R.S.Const. art. 2, § 17.—*State v. Leeson*, 323 P.2d 692, 84 Ariz. 44.—*Em Dom* 277.

Ariz. 1951. "Negligence" may consist of failure to use reasonable care, and what is or is not negligence is a question for jury, especially where the standard or such duty is not fixed but variable.—*Barker v. General Petroleum Corp.*, 232 P.2d 390, 72 Ariz. 187, opinion modified on rehearing 233 P.2d 449, 72 Ariz. 238.—*Neglig* 233, 1693.

Ariz. 1948. "Negligence" is failure to do what reasonable and prudent person would ordinarily have done, or doing of what such a person would not have done, under existing circumstances.—*Stewart v. Smith*, 200 P.2d 353, 68 Ariz. 91.—*Neglig* 233.

Ariz. 1941. Where owner of a dangerous instrumentality such as an automobile loans it to another who, to the knowledge of the owner, is incompetent to drive such vehicle, owner is guilty of "negligence" if the driver negligently injures another.—*Powell v. Langford*, 119 P.2d 230, 58 Ariz. 281.—*Autos* 192(11).

Ariz. 1941. Generally, conduct which might otherwise constitute "negligence" may not be so con-

sidered where the acts or omissions of the person injured occurred in the presence or under a reasonably well-founded apprehension of impending danger, or an emergency such as is calculated to produce fright, excitement, or bewilderment, and affect the judgment.—*Southwestern Freight Lines v. Floyd*, 119 P.2d 120, 58 Ariz. 249.—Neglig 510(1).

Ariz. 1941. "Negligence" is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such a person under existing circumstances would not have done, and the essence of the fault may lie in omission or commission.—*Scarborough v. Central Arizona Light & Power Co.*, 117 P.2d 487, 58 Ariz. 51, 138 A.L.R. 866.—Neglig 233.

Ariz. 1941. An action for "negligence" only lies when the alleged negligent act is a violation of a duty owed to the injured party.—*Scarborough v. Central Arizona Light & Power Co.*, 117 P.2d 487, 58 Ariz. 51, 138 A.L.R. 866.—Neglig 250.

Ariz. 1941. Common law "negligence" is a failure to act as a reasonable and prudent person would act under the circumstances, and the trial court has final decision as to what the conduct of a reasonable and prudent man under the circumstances should have been.—*Campbell v. English*, 110 P.2d 219, 56 Ariz. 549.—Neglig 233, 1693.

Ariz. 1939. "Negligence" is the omission to do something which is reasonably prudent man, guided by those considerations which usually regulate conduct of human affairs, would do, or is the doing of something which a prudent and reasonable man, guided by those same considerations, would not do, and it is not intrinsic or absolute, but is always relative to the surrounding circumstances of time, place and persons.—*Southern Pac. Co. v. Buntin*, 94 P.2d 639, 54 Ariz. 180, 124 A.L.R. 1422.—Neglig 233.

Ariz. 1936. If carrier which has goods in transit under contract to convey safely, knows that doing of particular act is necessary for safety of goods, and that such act may be performed by it without imposing upon it any burden for which it is not fully compensated, failure to protect shipment, as matter of law, constitutes "negligence".—*Southern Pac. R. Co. of Mexico v. Gonzalez*, 61 P.2d 377, 48 Ariz. 260, 106 A.L.R. 1042.—Carr 115.

Ariz. 1936. "Negligence" is the doing of something which a party is under legal obligation not to do, or failure to do something which he is under obligation to do.—*Southern Pac. R. Co. of Mexico v. Gonzalez*, 61 P.2d 377, 48 Ariz. 260, 106 A.L.R. 1012.—Neglig 200.

Ariz. 1931. "Negligence" ordinarily is result of carelessness.—*Luffy v. Lockhart*, 295 P. 975, 37 Ariz. 488.—Neglig 200.

Ariz. 1925. Employee must allege actionable "negligence" of employer. In action against employer, not brought under Employers' Liability Law nor Workmen's Compensation Act, employee must allege actionable negligence of employer; "negligence" being failure to do what a reasonably pru-

dent person would ordinarily have done under the circumstances of the situation, or the doing of what such a person, under the existing circumstances, would not have done (citing Words and Phrases, Negligence).—*Bowers v. J. D. Halstead Lumber Co.*, 236 P. 124, 28 Ariz. 122.—Mast & S 258(1).

Ariz. 1925. In action against employer, not brought under Employers' Liability Law nor Workmen's Compensation Act, employee must allege actionable negligence of employer; "negligence" being failure to do what a reasonably prudent person would ordinarily have done under the circumstances of the situation, or the doing of what such a person, under the existing circumstances, would not have done (citing Words and Phrases, Negligence).—*Bowers v. J. D. Halstead Lumber Co.*, 236 P. 124, 28 Ariz. 122.—Emp Liab 180.

Ariz.Terr. 1903. An essential ingredient to any conception of "negligence" is that it involves the violation of some legal duty which one person owes another—a duty to take care for the safety of the person or property of the other. This duty may be assumed by contract, or it may be imposed by implication of law.—*Phoenix Light & Fuel Co. v. Bennett*, 74 P. 48, 8 Ariz. 314, 63 L.R.A. 219.

Ariz.App. Div. 1 1996. "Negligence" is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. Restatement (Second) of Torts § 282.—*Tellez v. Saban*, 933 P.2d 1233, 188 Ariz. 165, reconsideration denied, and review denied.—Neglig 233.

Ariz.App. Div. 1 1983. The elements of actionable "negligence" are a duty owed to the plaintiff, a breach thereof and an injury proximately caused by the breach.—*Matts v. City of Phoenix*, 669 P.2d 94, 137 Ariz. 116, case dismissed 669 P.2d 89, 137 Ariz. 111.—Neglig 202.

Ariz.App. Div. 1 1980. The term "negligence" includes both action and inaction, commission and omission; the word "act" denotes the affirmative while "omission" denotes the negative; "act" is the expression of will and purpose; "omission" is inaction; "act" carries the idea of performance; "omission" carries the idea of refraining from action. A.R.S. § 1-215, subd. 20.—*Terry v. Lincscott Hotel Corp.*, 617 P.2d 56, 126 Ariz. 548.—Neglig 200.

Ariz.App. Div. 2 1979. "Negligence" is conduct which involves unreasonably great risk of causing damages.—*Fuller v. Southern Pac. Transp. Co.*, 596 P.2d 726, 122 Ariz. 588.—Neglig 233.

Ariz.App. Div. 2 1978. Liability in a claim founded on "negligence" depends on a showing that the defendant had a duty to protect the plaintiff from the injury of which he complains, defendant failed to perform that duty, and such failure was the proximate cause of the plaintiff's injuries.—*DeHoney v. Hernandez*, 594 P.2d 1010, 122 Ariz. 314, opinion vacated 595 P.2d 159, 122 Ariz. 367.—Neglig 202.

Ark. 1996. "Negligence" is failure to do something which reasonably careful person would do; negligent act arises from situation where ordinarily

prudent person in same situation would foresee such appreciable risk of harm to others that he would not act or at least would act in more careful manner.—*Mason v. Jackson*, 914 S.W.2d 728, 323 Ark. 252.—Neglig 213, 233.

Ark. 1995. "Negligence" is failure to do something which reasonably careful person would do.—*Mahan v. Hall*, 897 S.W.2d 571, 320 Ark. 473.—Neglig 233.

Ark. 1978. In order for one to recover for personal injuries, there must be a negligent act which proximately causes damage which can be reasonably foreseen; "negligence" is failure to do something which a reasonably careful person would do, or doing something which a reasonably and careful person would not do, under circumstances similar to those shown by evidence.—*St. Mary's Hospital, Inc. v. Bynum*, 573 S.W.2d 914, 264 Ark. 691.—Neglig 233, 387.

Ark. 1963. "Negligence" is failure to exercise ordinary care.—*Ben M. Hogan & Co. v. Fletcher*, 370 S.W.2d 801, 236 Ark. 951.—Neglig 232.

Ark. 1963. "Negligence" is the failure to use ordinary care.—*Spence v. Vaught*, 367 S.W.2d 238, 236 Ark. 509.—Neglig 232.

Ark. 1958. "Negligence" is the doing of that which ordinarily prudent person would not do under circumstances, or failure to do that which ordinarily prudent person would do.—*Hobbs Western Tie Co. v. Orahood*, 315 S.W.2d 930, 229 Ark. 241.—Neglig 232.

Ark. 1953. "Negligence" is the doing of that which an ordinarily prudent person would not do under the circumstances, or the failure to do that which an ordinarily prudent person would do under the circumstances.—*American Bus Lines v. Merritt*, 254 S.W.2d 963, 221 Ark. 596.—Neglig 232.

Ark. 1943. "Negligence" may be an act of omission as well as one of commission.—*National Fire Ins. Co. v. Yellow Cab Co.*, 171 S.W.2d 927, 205 Ark. 953.—Neglig 200.

Ark. 1942. Instruction that one who eats cake is not entitled to recover damages because of illness resulting therefrom, but to recover damages, the injured party must show that there was negligence by defendant in manufacturing the cake, "negligence" being defined as failure to exercise that degree of care which a reasonably prudent person would exercise under similar conditions, and requiring verdict for defendant upon finding that defendant was not negligent was correct.—*Arkansas Baking Co. v. Aaron*, 166 S.W.2d 14, 204 Ark. 990.—Food 25.

Ark. 1941. The necessary and ordinary operation of shifting gears on railroad weed burning machine is not of itself "negligence" rendering railroad company liable for injuries to employee thrown from machine as result of jerk caused thereby.—*Missouri Pac. R. Co. v. Guy*, 157 S.W.2d 11, 203 Ark. 166, certiorari granted *Guy v. Missouri Pacific Railroad Company*, 62 S.Ct. 1046, 316 U.S.

655, 86 L.Ed. 1735, certiorari dismissed 63 S.Ct. 22, 317 U.S. 702, 87 L.Ed. 561.—Emp Liab 73.

Ark. 1941. That foreman told employee to assist another in getting a barrel of paint, when there allegedly was paint on the floor to foreman's knowledge, would not constitute "negligence" as ground for recovery by employee for injuries suffered in fall on floor.—*Tucker Duck & Rubber Co. v. Harvey*, 154 S.W.2d 828, 202 Ark. 1033.—Emp Liab 77; Mast & S 311.

Ark. 1941. If employer failed to warn employee of danger of working with lime and cement and because of that failure employee was injured, failure to warn employee was "negligence".—*Harmon v. Ward*, 149 S.W.2d 575, 202 Ark. 54.—Emp Liab 85.

Ark. 1941. Where mature man had been employed for about five weeks in cutting and felling trees for electric company and related work, and employees were instructed to shout "timber" when tree was about to fall, and employee did so shout when tree cut by him was about to fall, failure to instruct employee on danger that tree would rebound was not "negligence".—*A.A. Elec. Co. v. Ray*, 149 S.W.2d 38, 202 Ark. 85.—Emp Liab 85.

Ark. 1941. One doing what person of ordinary prudence would do under circumstances is not guilty of "negligence", but, if he fails to do so, he is guilty of negligence.—*Bradley Lumber Co. of Ark. v. Clanton*, 147 S.W.2d 14, 201 Ark. 657.—Neglig 232.

Ark. 1939. "Negligence" is the doing of something that a person of ordinary prudence would not do, or failure to do something that a person of ordinary prudence would do, under the same or similar circumstances, and to be actionable there must be a violation of duty resulting in injury to another.—*St. Louis-San Francisco Ry. Co. v. Ward*, 124 S.W.2d 975, 197 Ark. 520.—Neglig 232, 250.

Ark. 1939. In employee's action against fellow servant and employer for injuries, evidence that fellow servant apparently inadvertently stepped forward without signal while aiding plaintiff in carrying heavy railroad tie, thereby causing plaintiff to be thrown against boxcar, did not establish actionable "negligence," but warranted conclusion that injuries were result of pure accident for which employer was not liable.—*St. Louis-San Francisco Ry. Co. v. Ward*, 124 S.W.2d 975, 197 Ark. 520.—Emp Liab 206.1.

Ark. 1938. "Negligence" is not synonymous with intentional willful action but may consist of inattention or neglect.—*Ball v. Hail*, 118 S.W.2d 668, 196 Ark. 491.—Neglig 201.

Ark. 1938. "Negligence" is not synonymous with intentional willful action but may consist of inattention or neglect.—*Seaman Store Co. v. Bonner*, 113 S.W.2d 1106, 195 Ark. 563.—Neglig 201.

Ark. 1937. "Negligence" is the failure to do something which a person of ordinary prudence would do under circumstances, or the doing of something that person of ordinary prudence would

not do under circumstances.—*Self v. Kirkpatrick*, 110 S.W.2d 13, 194 Ark. 1014.—*Neglig* 232.

Ark. 1937. "Negligence" is the failure to do something which a person of ordinary prudence would do under circumstances, or the doing of something that person of ordinary prudence would not do under circumstances, and, if there is any substantial evidence tending to show negligence or contributory negligence, question is for jury.—*Self v. Kirkpatrick*, 110 S.W.2d 13, 194 Ark. 1014.—*Neglig* 1694, 1717.

Ark. 1937. "Negligence" depends upon the circumstances surrounding the party at the time. "Negligence" in a legal sense is no more nor less than the failure to observe, for the protection of the interest of another person, that degree of care, precaution, and vigilance which circumstances justly demand, whereby such other person suffered injury. "Negligence" is doing something that a person of ordinary prudence would not do, or failure to do something that person of ordinary prudence would do under the circumstances.—*Riley v. Motor Exp.*, 102 S.W.2d 850, 193 Ark. 780.

Ark. 1936. "Negligence" means the failure to do something that a person of ordinary prudence would do, or the doing of something that a person of ordinary prudence would not do under the circumstances. In suit against bus company or any other person for injuries, except against a railroad company for injury caused by the running of a train, plaintiff must allege facts constituting negligence. *Crawford & Moses' Dig.* § 8562; *Const.* art. 17, § 12.—*Wade v. Brocato*, 95 S.W.2d 94, 192 Ark. 826.

Ark. 1933. "Negligence" is question for jury, where any evidence tends to show existence thereof.—*Ragland v. Snotzmeier*, 55 S.W.2d 923, 186 Ark. 778.—*Neglig* 1694.

Ark. 1931. "Negligence" is doing of something that man of ordinary prudence would not do under same circumstances, or failure to do something which man of ordinary prudence would have done.—*Mosley v. Raines*, 37 S.W.2d 78, 183 Ark. 569.—*Neglig* 232.

Ark. 1931. "Negligence" which will warrant servant's recovery against master means violation of some duty that master owed servant.—*Wheeler v. Ellis*, 35 S.W.2d 64, 183 Ark. 133.—*Emp Liab* 11.

Ark. 1929. "Negligence" means failure to exercise ordinary care.—*Johnson v. Coleman*, 20 S.W.2d 186, 179 Ark. 1087.—*Neglig* 232.

Ark. 1929. "Negligence" means doing or not doing something person of ordinary prudence would not do or would do under circumstances.—*Arkansas Drilling Co. v. Gross*, 17 S.W.2d 889, 179 Ark. 631.—*Neglig* 232.

Ark. 1927. "Negligence" is doing something person of ordinary prudence would not do, under circumstances.—*Coca-Cola Bottling Co. v. Shipp*, 297 S.W. 856, 174 Ark. 130.—*Neglig* 232.

Ark. 1918. Where cause of action against provision dealer is predicated not upon implied warranty

of fitness for human consumption, but upon a negligent sale of unwholesome food for immediate consumption, right of action for damages is not confined to immediate purchaser, but extends to any person who might reasonably be expected to suffer injury, being based on "negligence," failure to exercise ordinary care to prevent injury reasonably to be anticipated.—*Heinemann v. Barfield*, 207 S.W. 58, 136 Ark. 456.—*Food* 25.

Ark. 1912. A railroad company must give the statutory signals when approaching a highway crossing, and a failure to do so is "negligence," within *Kirby's Dig.* § 6595, providing that railroad companies are liable for damages caused by the omission to give statutory signals.—*Kansas City Southern Ry. Co. v. Drew*, 147 S.W. 50, 103 Ark. 374.

Ark. 1909. "Negligence" presupposes the existence of a duty to protect from injury, and failure to perform that duty, from which an injury results.—*St. Louis, I. M. & S. Ry. Co. v. Rhoden*, 123 S.W. 798, 93 Ark. 29, 137 *Am.St.Rep.* 73, 20 *Am. Ann. Cas.* 915.

Ark. 1907. "Negligence" is the omission to do something which a reasonably prudent and careful person would, or the doing something which such a person would not, do under like circumstances.—*Arkansas & L. Ry. Co. v. Sanders*, 99 S.W. 1109, 81 Ark. 604.

Ark. 1906. "Negligence," in reference to the maintenance of a track in a mine, means the absence of that care to keep and maintain it in a reasonably safe condition for service that a man of ordinary care and prudence, under the circumstances of the business, considering its perils, dangers, and necessities, would have used.—*Western Coal & Mining Co. v. Honaker*, 96 S.W. 361, 79 Ark. 629.

Ark. 1906. When, in order to determine whether one has been guilty of "negligence," his conduct is compared with that of reasonable persons under similar circumstances, the comparison must be directed to a person of ordinary reason and prudence. The standard of duty is not the foresight and caution which some particular man is capable of exercising, but the foresight and caution of the average prudent man, or of a reasonable man standing in the shoes of the person charged with negligence.—*Hoard v. State*, 95 S.W. 1002, 80 Ark. 87.

Ark. 1895. The term "negligence" is relative, and its application depends upon the situation of the parties, and the degree of care and vigilance which the circumstances confronting them reasonably imposed.—*St. Louis, I. M. & S. Ry. Co. v. Lewis*, 30 S.W. 765, 60 Ark. 409, rehearing denied 30 S.W. 1135, 60 Ark. 409.

Cal. 1999. Generally, "negligence" is the failure to exercise the care a person of ordinary prudence would exercise under the circumstances.—*Delaney v. Baker*, 971 P.2d 986, 82 *Cal.Rptr.2d* 610, 20 *Cal.4th* 23.—*Neglig* 232.

Cal. 1992. Whenever an injured party seeks punitive damages for an injury that is directly related

to professional services provided by a health care provider acting in his capacity as such, then the action is one "arising out of the professional negligence of a health care provider," and the party must comply with statute barring claim for punitive damages in such an action unless court has determined at pleading stage that there is a "substantial probability" that plaintiff will prevail on the claim; moreover, identifying a cause of action as an "intentional tort" as opposed to "negligence" does not itself remove claim from requirements of statute; rather, allegations that identify nature and cause of injury must be examined to determine whether each is directly related to manner in which professional services were provided. West's Ann.Cal.C.C.P. § 425.13(a).—Central Pathology Service Medical Clinic, Inc. v. Superior Court, 832 P.2d 924, 10 Cal.Rptr.2d 208, 3 Cal.4th 181, rehearing denied.—Health 831.

Cal. 1968. "Negligence" is the failure to exercise ordinary care under the circumstances.—Williams v. Carr, 440 P.2d 505, 68 Cal.Rptr. 305, 68 Cal.2d 579.—Neglig 232.

Cal. 1950. The term "negligence", as used in Jones Act, is given a liberal interpretation, and includes any conscious or careless breach of employer's obligation to provide for safety of the crew. Jones Act, 46 U.S.C.A. § 688.—Rouchleau v. Silva, 217 P.2d 929, 35 Cal.2d 355.—Seamen 29(1).

Cal. 1945. "Negligence" is not the act itself, but is a fact which defines character of an act in respect to its being a civil wrong, and determination of that fact rests with court and not the actor.—Fackrell v. City of San Diego, 157 P.2d 625, 26 Cal.2d 196, 158 A.L.R. 773.—Neglig 200.

Cal. 1944. "Negligence" in its last analysis imports a lack of care, and both negligence and care are relative to duty.—Columbia Laboratories v. California Beauty Supply Co., 148 P.2d 15, 24 Cal.2d 114.—Neglig 210.

Cal. 1943. Where claim for decrease in market value of an apartment house allegedly caused by construction of approaches to a bridge was based upon liability incurred when the state exercised its power of eminent domain without pursuing the customary procedure therefor, the cause of action was in inverse condemnation and was not founded upon "express contract" or "negligence" within statute requiring persons having claims against state on "express contracts" or for "negligence" to present the claim to the State Board of Control. Pol. Code, § 688 (repealed. See Govt.Code, § 16023 et seq.); Const. art. 1, § 14.—Bacich v. Board of Control of California, 144 P.2d 818, 23 Cal.2d 343.—Em Dom 277.

Cal. 1943. Generally, it is "negligence" to use an instrumentality, whether a human being or thing, which user knows or should know is so incompetent, unfit, inappropriate, or defective that its use involves unreasonable risk of harm to others.—Fernelius v. Pierce, 138 P.2d 12, 22 Cal.2d 226.—Neglig 305.

Cal. 1942. Violation of statute requiring employer to furnish employees with pure drinking water in closed containers and in individual drinking cups was not mere "negligence" but criminal conduct punishable as a misdemeanor. West's Ann.Health & Safety Code, § 3700 et seq.—Parkhurst v. Industrial Acc. Commission, 129 P.2d 113, 20 Cal.2d 826.—Work Comp 941.

Cal. 1941. "Negligence" is an unintentional tort, a failure to exercise the degree of care in a given situation that a reasonable man under similar circumstances would exercise to protect others from harm.—Donnelly v. Southern Pac. Co., 118 P.2d 465, 18 Cal.2d 863.—Neglig 233.

Cal. 1941. A "negligent" person has no desire to cause the harm that results from his carelessness, as distinguished from a person guilty of "willful misconduct" who intends to cause harm; "willfulness" and "negligence" being contradictory terms.—Donnelly v. Southern Pac. Co., 118 P.2d 465, 18 Cal.2d 863.—Neglig 201, 275.

Cal. 1941. "Wanton and willful misconduct" involves no intention as does "willful misconduct", to do harm, and differs from "negligence" in that it does involve an intention to perform an act which the actor knows, or should know, will very probably cause harm.—Donnelly v. Southern Pac. Co., 118 P.2d 465, 18 Cal.2d 863.—Neglig 275.

Cal. 1941. "Wanton and reckless misconduct" is more closely akin to "willful misconduct" than to "negligence", and has most of the legal consequences of willful misconduct in that it justifies an award of punitive damages, and contributory negligence is not a defense.—Donnelly v. Southern Pac. Co., 118 P.2d 465, 18 Cal.2d 863.—Damag 91(1); Neglig 275, 547.

Cal. 1941. The federal courts have rejected any distinction between "negligence" and "gross negligence", and recognize no degrees of negligence as do state courts.—Donnelly v. Southern Pac. Co., 118 P.2d 465, 18 Cal.2d 863.—Neglig 273.

Cal. 1941. Under federal court decisions, if a person fails to exercise the degree of care that the law requires him to exercise under the circumstances, he is "negligent", and though there may be different standards of care in different circumstances, his failure to exercise such care in each case constitutes no more than "negligence".—Donnelly v. Southern Pac. Co., 118 P.2d 465, 18 Cal.2d 863.—Neglig 230, 272.

Cal. 1941. Under provision of the Hepburn Act regulating issuance of free passes by interstate carriers, such a pass may validly release carrier from liability for negligence for injuries to passenger, including what in California would constitute "gross negligence", and the release would be inapplicable only in case of "wanton and reckless misconduct", as distinguished from "negligence". Hepburn Act, 34 Stat. 584, 49 U.S.C.A. § 1 et seq.—Donnelly v. Southern Pac. Co., 118 P.2d 465, 18 Cal.2d 863.—Carr 307(2), 307(6.1).

Cal. 1941. If a tree is in such close proximity to a pole line that wind may cause it to fall across the

wires, the failure of owner of line to provide against such eventuality is "negligence".—*Irelan-Yuba Gold Quartz Mining Co. v. Pacific Gas & Electric Co.*, 116 P.2d 611, 18 Cal.2d 557.—*Electricity* 16(3).

Cal. 1940. The violation of a railroad custom, such as the custom requiring that the whereabouts of a fellow employee must be known before cars on which he is riding are coupled, constitutes "negligence".—*Showalter v. Western Pac. R. Co.*, 106 P.2d 895, 16 Cal.2d 460.—*Emp Liab* 70.

Cal. 1937. "Negligence" is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; moreover, it is not absolute or intrinsic, but always relative to some circumstance of time, place, or person.—*Weber v. Pinyan*, 70 P.2d 183, 9 Cal.2d 226, 112 A.L.R. 407.

Cal. 1931. Essence of "negligence" is failure to exercise due care and take proper precaution in particular case.—*Damgaard v. Oakland High School Dist. of Alameda County*, 298 P. 983, 212 Cal. 316.—*Neglig* 231.

Cal. 1928. "Negligence" is want of care which person of ordinary prudence would exercise.—*Bolar v. Maxwell Hardware Co.*, 271 P. 97, 205 Cal. 396, 60 A.L.R. 429.—*Neglig* 232.

Cal. 1917. "Negligence" is the failure to exercise ordinary care; any want on plaintiff's part of the care which is appropriate to the circumstances is negligence, and by West's Ann.Civ.Code, § 1714, will prevent recovery, if it be one of the proximate causes of the injury.—*Steinberger v. California Elec. Garage Co.*, 168 P. 570, 176 Cal. 386.

Cal. 1910. "Negligence" may be active or passive, consisting in heedlessly doing an improper thing or in heedlessly refraining from doing the proper thing.—*Basler v. Sacramento Gas & Elec. Co.*, 111 P. 530, 158 Cal. 514, Am. Ann. Cas. 1912A, 642.

Cal. 1905. "Negligence" is the breach or omission of a legal duty. Defendant, an electric light company, furnished its linemen with several pike poles (long poles having an iron ferule and an iron pike in the end) of the character and construction customarily used in bracing electric light poles while removing the same. One of these pike poles had become dull at the point and unfit to be used with safety. While plaintiff was on an electric light pole, stripping the wires, one of his fellow servants picked up and used the blunt pike pole, which did not fix the electric light pole so as to properly hold the same, and it in consequence fell, whereby plaintiff was injured. Held, that defendant had properly fulfilled its duty of furnishing suitable tools and appliances, and the injury was in no way the result of its negligence.—*Towne v. United Elec. Gas & Power Co.*, 81 P. 124, 146 Cal. 766.

Cal. 1903. "Negligence" cannot be defined and measured by any precise standard. It is always relative to particular facts and circumstances upon which it is sought to be predicated. As a general

rule, it is a question for the jury to determine, from the facts and the logical inferences therefrom. It is only in cases where the facts are without dispute, or the deduction inevitably that of no negligence, that the court can say, as a matter of law, that no negligence was proven.—*Wikberg v. Olson Co.*, 71 P. 511, 138 Cal. 479.

Cal. 1897. "Care," like its correlative term, "negligence," is a relative term, and is to be judged by the circumstances as they exist, not as they might have existed under other and different conditions.—*Fox v. Oakland Consol. St. Ry.*, 50 P. 25, 118 Cal. 55.

Cal.App. 1 Dist. 1978. For purpose of interpreting the Insurance Code sections which provide for the suspension of an insurance agent's license for any cause constituting grounds for denial of a license application, including a showing of "incompetency" in the conduct of any business, terms "negligence" and "incompetency" are not synonymous; a licensee may be competent or capable of performing a given duty but negligent in performing that duty. West's Ann. Insurance Code, §§ 1668, 1668(j), 1738.—*Pollak v. Kinder*, 149 Cal. Rptr. 787, 85 Cal.App.3d 833.—*Insurance* 1618.

Cal.App. 1 Dist. 1968. "Negligence" is conduct that falls below standard established by law for protection of others against unreasonable risk of harm.—*Matthias v. United Pac. Ins. Co.*, 67 Cal. Rptr. 511, 260 Cal.App.2d 752.—*Neglig* 233.

Cal.App. 1 Dist. 1956. "Negligence" is conduct which falls below the standard established by law for protection of others against unreasonable risk of harm.—*Barbaria v. Independent Elevator Co.*, 293 P.2d 855, 139 Cal.App.2d 474.—*Neglig* 230.

Cal.App. 1 Dist. 1954. As used in policies insuring county against liability for malpractice, "mistake", "error", or "negligence" in treatment of patients at county hospital, quoted words necessarily meant more than "malpractice".—*Burns v. American Cas. Co.*, 273 P.2d 605, 127 Cal.App.2d 198.—*Insurance* 2391(4).

Cal.App. 1 Dist. 1953. The doing of an act with appreciation of the degree of danger in addition to mere appreciation of the danger is necessary to establish "negligence" as a matter of law.—*Ross v. San Francisco Unified School District*, 260 P.2d 663, 120 Cal.App.2d 185.—*Neglig* 213.

Cal.App. 1 Dist. 1949. Driving vehicle across center line onto lefthand side of highway without excuse, except under conditions specified in statute, constitutes "negligence" as a matter of law. West's Ann. Vehicle Code, §§ 21650, 21651.—*Robinson v. Kelly*, 212 P.2d 921, 95 Cal.App.2d 320.—*Autos* 207.

Cal.App. 1 Dist. 1949. "Negligence" is opposed to diligence and signifies absence of care.—*Goldman v. House*, 209 P.2d 639, 93 Cal.App.2d 572.—*Neglig* 200.

Cal.App. 1 Dist. 1943. To establish that school district's failure to provide adequate protection in school yard where some 150 boys were engaged in

many games constituted "negligence", it was not necessary that injury to pupil whose leg was broken by fellow pupil must have been foreseeable by school authorities or yard supervisor. School Code, §§ 2.801, 5.543 (repealed. See Education Code, §§ 1007, 13229).—*Charonnat v. San Francisco Unified School Dist.*, 133 P.2d 643, 56 Cal.App.2d 840.—*Schools* 80(1).

Cal.App. 1 Dist. 1942. Alighting from left door of automobile into street is not of itself "negligence", but is negligence if a person of ordinary prudence under all the circumstances then existing would not have done so.—*Stricklin v. Rosemeyer*, 126 P.2d 665, 52 Cal.App.2d 558.—*Urb R R* 30.

Cal.App. 1 Dist. 1942. In action by pedestrian for injuries sustained when struck by an automobile the jury were properly instructed that "negligence" is failure to use ordinary care and that "ordinary care" is that care which persons of ordinary prudence exercise in the management of their own affairs.—*Jones v. Bayley*, 122 P.2d 293, 49 Cal.App.2d 647.—*Autos* 246(4).

Cal.App. 1 Dist. 1941. The test of what constitutes "negligence" is standard of ordinarily prudent man under normal circumstances, and presence of unusual or extraordinary circumstances affecting transaction modifies application of general rule.—*Lolli v. Market St. Ry. Co.*, 110 P.2d 436, 43 Cal.App.2d 166.—*Neglig* 232.

Cal.App. 1 Dist. 1941. In California, "negligence" is not divided into well defined degrees, but the rule is that every person must exercise reasonable care, and what is "reasonable care" depends on factors of time, place, person and surrounding circumstances.—*Lolli v. Market St. Ry. Co.*, 110 P.2d 436, 43 Cal.App.2d 166.—*Neglig* 233, 272.

Cal.App. 1 Dist. 1940. Where an owner deposits his property with another and gives the depository such indicia of ownership that a reasonable man, dealing with such agent, is reasonably led to believe that the agent is the owner of such property, and he parts with value in reliance thereon, the misplaced confidence is "negligence" within the meaning of the statutory maxim that, where one of two innocent persons must suffer by the act of a third, he by whose "negligence" it happened must be the sufferer. Civ.Code, § 3543.—*Phelps v. American Mortg. Co.*, 104 P.2d 880, 40 Cal.App.2d 361.—*Estop* 72.

Cal.App. 1 Dist. 1938. "Negligence" is breach or omission of a legal duty, and, to warrant action based thereon, there must exist some obligation toward plaintiff which defendant has left undischarged.—*Higgins v. Monckton*, 83 P.2d 516, 28 Cal.App.2d 723.—*Neglig* 210.

Cal.App. 1 Dist. 1936. "Negligence" is misconduct without element of intent to injure, and to that extent is negative in character. St.1931, p. 1693, § 141½.—*Frisvold v. Leahy*, 60 P.2d 151, 15 Cal.App.2d 752.—*Neglig* 201.

Cal.App. 1 Dist. 1936. Characteristics of mere "negligence" are inadvertence or absence of intent to injure, whereas to constitute "malice," essential to maintenance of malicious prosecution action,

there must have been motive or purpose and it must have been an improper one.—*Richter v. Neilson*, 54 P.2d 54, 11 Cal.App.2d 503.—*Mal Pros* 27.

Cal.App. 1 Dist. 1932. "Negligence," as distinguished from "trespass," involves doing lawful act in careless way.—*Jones v. Hedges*, 12 P.2d 111, 123 Cal.App. 742.—*Neglig* 201.

Cal.App. 1 Dist. 1931. Liability may be imposed on owner who is guilty of "negligence" in intrusting automobile to another.—*Owens v. Carmichael's U-Drive Autos*, 2 P.2d 580, 116 Cal.App. 348.—*Autos* 192(6).

Cal.App. 1 Dist. 1930. It is not "negligence" to fail to anticipate danger which can come only from violation of law or duty on part of another.—*Rosella v. Paxinos*, 294 P. 39, 110 Cal.App. 299.—*Neglig* 504.

Cal.App. 1 Dist. 1929. Instruction that, if decedent was guilty of "contributory negligence," even in slightest degree, which "negligence" proximately contributed to accident, plaintiffs were not entitled to recover, held not erroneous.—*Botti v. Savill*, 275 P. 1029, 97 Cal.App. 524.—*Neglig* 1741.

Cal.App. 1 Dist. 1929. "Negligence" imparts lack of care.—*Spore v. Washington*, 274 P. 407, 96 Cal.App. 345.—*Neglig* 200.

Cal.App. 1 Dist. 1912. The conflict in instructions submitting the issue of negligence of defendant and the issue of a willful wrongful act cannot be harmonized on the theory that the term "negligence," as used in the first instruction, covers willful acts, since "negligence" signifies the absence of care and implies a failure of duty and excludes an idea of intentional wrong, while "willful negligence" implies an intentional failure to perform a manifest duty.—*Tognazzini v. Freeman*, 123 P. 540, 18 Cal.App. 468.

Cal.App. 2 Dist. 1962. There is a duty on the part of a lessor of an inherently dangerous instrumentality toward an employee of a lessee, for whose use the machine is obtained, not only to warn of defects actually known, but also to use reasonable care in making examination of the machine before leasing it, in order to determine that it is fit for the use known to be intended, and a failure to comply with such standard of reasonable care constitutes "negligence."—*Varas v. Barco Mfg. Co.*, 22 Cal.Rptr. 737, 205 Cal.App.2d 246.—*Bailm* 21.

Cal.App. 2 Dist. 1958. "Negligence" as applied to common carrier with respect to passengers means any breach of duty towards passenger.—*Price v. Atchison, T. & S. F. Ry. Co.*, 330 P.2d 933, 164 Cal.App.2d 400.—*Carr* 280(1).

Cal.App. 2 Dist. 1956. "Negligence" with respect to entry of a judgment nunc pro tunc in a divorce action may be passive in character, and may consist in heedlessly refraining from doing the proper thing, and when the circumstances call for activity, one who does not do what he should do is negligent. West's Ann.Civ.Code, § 133.—*Berry v.*

Berry, 294 P.2d 757, 140 Cal.App.2d 50.—Divorce 162.

Cal.App. 2 Dist. 1952. "Negligence" is a relative term and its existence is dependent upon surrounding circumstances, viewed in light of what an ordinary prudent person, confronted with such situation, would have done.—McMahon v. Marshall, 244 P.2d 481, 111 Cal.App.2d 248.—Neglig 232.

Cal.App. 2 Dist. 1949. "Negligence" as used in the Federal Employers' Liability Act is the violation by a carrier of its duty to use reasonable care in furnishing its employees with a safe place to work, and safe tools and appliances with which to work. Federal Employers' Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.—Spencer v. Atchison, T. & S.F. Ry. Co., 207 P.2d 126, 92 Cal.App.2d 490.—Emp Liab 35.

Cal.App. 2 Dist. 1946. "Negligence" is the doing of some act which a reasonably prudent person would not do or the failure to do something which a reasonably prudent person would do, actuated by those considerations which ordinarily regulate the conduct of human affairs.—Bosserman v. Olmstead, 175 P.2d 49, 77 Cal.App.2d 236.—Neglig 233.

Cal.App. 2 Dist. 1942. Although the true owner is guilty of no more than misplaced confidence, such misplaced confidence is "negligence" within meaning of statutory maxim that where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer. Civ.Code, § 3543.—Meadows v. Hampton Live Stock Commission Co., 131 P.2d 591, 55 Cal.App.2d 634.—Estop 72.

Cal.App. 2 Dist. 1942. Violation by fellow workman of a known custom or duty constitutes "negligence" for which railroad may be held liable under Federal Employers' Liability Act to an employee injured as a result thereof. Federal Employers' Liability Act § 1, 45 U.S.C.A. § 51.—Matthews v. Atchison, T. & S.F. Ry. Co., 129 P.2d 435, 54 Cal.App.2d 549.—Cust & U 10; Emp Liab 112.

Cal.App. 2 Dist. 1942. The words "carelessly" and "negligently" as plaintiff and averring that each of specified acts was done negligently and carelessly were not synonymous, "careless" meaning free from care, not taking ordinary or proper care, and used in answer charging asserted negligence of "negligence" implying omission of duty in doing or forbearing which when resulting in injury, rendered the negligent person liable for damages and hence it must be presumed that the pleader used the words as conveying different meanings.—Mardesich v. C.J. Hendry Co., 125 P.2d 595, 51 Cal.App.2d 567.—Neglig 1531.

Cal.App. 2 Dist. 1941. Where pedestrian was familiar with intersection of two streets and street railway private right of way, and with custom of sounding gong before entering intersection, he had a right to rely upon warning, and was not guilty of "negligence" as a matter of law in crossing intersection after seeing car stopped behind him at intersection, nor in continuing to cross after looking again and seeing car still stopped, but his contribu-

tory negligence as affecting street railroad's liability when he was struck by car coming from behind was for jury in view of other traffic which he was required to watch.—Amendt v. Pacific Elec. Ry. Co., 115 P.2d 588, 46 Cal.App.2d 248.—Urb R R 26, 30.

Cal.App. 2 Dist. 1941. To forget a known danger is not "negligence" unless such forgetfulness shows want of ordinary care.—Hechler v. McDonnell, 109 P.2d 426, 42 Cal.App.2d 515.—Neglig 506(3).

Cal.App. 2 Dist. 1940. In determining the presence or absence of "negligence", the test is, not what others would have done in that regard, but, rather, what would a reasonably prudent person do under similar circumstances?—Martin v. Fox West Coast Theatres Corp., 108 P.2d 29, 41 Cal.App.2d 925.—Neglig 233.

Cal.App. 2 Dist. 1937. One essential element of "equitable estoppel" is fraudulent intent, as shown by circumstances and conduct which would render it a fraud for party to deny what he had previously induced or suffered another to believe and take action on, but "negligence," that is careless and culpable conduct, is equivalent to intent to deceive, if such neglect is in respect to some duty owing to party asserting it.—Fleishbein v. Western Auto Supply Agency, 65 P.2d 928, 19 Cal.App.2d 424.—Estop 53.

Cal.App. 2 Dist. 1936. To constitute actionable "negligence" there must be a duty or obligation which defendant is under to protect plaintiff from injury, and failure to discharge such duty.—Palmer v. Crafts, 60 P.2d 533, 16 Cal.App.2d 370.—Neglig 250.

Cal.App. 2 Dist. 1936. To constitute actionable "negligence" there must be a duty or obligation which defendant is under to protect plaintiff from injury, failure to discharge such duty, and injury resulting from the failure.—Palmer v. Crafts, 60 P.2d 533, 16 Cal.App.2d 370.—Neglig 202.

Cal.App. 2 Dist. 1936. To constitute actionable "negligence" there must be a duty or obligation which defendant is under to protect plaintiff from injury, failure to discharge such duty, and injury resulting from the failure; and not only must the complaint disclose such elements, but evidence must support them, and absence of proof of any of them is fatal to recovery.—Palmer v. Crafts, 60 P.2d 533, 16 Cal.App.2d 370.—Neglig 202, 1650.

Cal.App. 2 Dist. 1936. "Negligence" is opposed to diligence and signifies absence of care, and is negative in its nature, implying failure of duty, and excludes idea of intentional wrong, so that person ceases to be negligent when he wills to do an injury.—Gimenez v. Rissen, 55 P.2d 292, 12 Cal. App.2d 152, modified 56 P.2d 299, 12 Cal.App.2d 152.—Neglig 201.

Cal.App. 2 Dist. 1931. "Negligence" of physician consists in doing something which he should not have done, or omitting something which he should have done.—Peppercorn v. Murphy, 299 P. 762, 114 Cal.App. 101.

Cal.App. 2 Dist. 1931. "Negligence" is not act itself, but fact defining character of act and making it legal wrong.—McAllister v. Brown, 299 P. 753, 114 Cal.App. 239.—Neglig 200.

Cal.App. 2 Dist. 1926. Instruction to find for plaintiff if automobile collision was proximately caused by "negligence" of driver and plaintiff was without "fault" held not erroneous.—Marston v. Pickwick Stages, 248 P. 930, 78 Cal.App. 526.—Autos 246(23.1).

Cal.App. 2 Dist. 1916. "Negligence" is a relative term, depending upon inferences to be drawn from many facts and circumstances which it is the province of the jury to draw in every case, unless the facts are such that reasonable minds cannot differ.—Cooley v. Brunswig Drug Co., 157 P. 13, 30 Cal.App. 58.

Cal.App. 2 Dist. 1913. "Negligence" is a comparative term, and the degree of care which in one case would be negligence might in another be deemed the exercise of more than ordinary prudence.—Medlin v. Spazier, 137 P. 1078, 23 Cal. App. 242.—Neglig 230.

Cal.App. 2 Dist. 1909. Failure to perform a duty imposed by statute or ordinance is "negligence."—Fenn v. Clark, 103 P. 944, 11 Cal.App. 79.

Cal.App. 3 Dist. 1972. "Negligence" signifies and stands for the absence of care.—Wingfield v. Fielder, 105 Cal.Rptr. 619, 29 Cal.App.3d 209.—Neglig 200.

Cal.App. 3 Dist. 1956. "Negligence" is not an absolute term but a relative one, and in deciding whether there was negligence in a given case, the conduct in question must be considered in the light of all surrounding circumstances shown by the evidence.—Clinkscale v. Germershausen, 302 P.2d 23, 145 Cal.App.2d 76.—Neglig 200.

Cal.App. 3 Dist. 1949. To constitute actionable "negligence", there must be a legal duty to use due care, a breach of such duty and proximate causation between such breach and the injury.—Lewis v. Pacific Gas & Elec. Co., 212 P.2d 243, 95 Cal.App.2d 60.—Neglig 202.

Cal.App. 3 Dist. 1942. Where it was raining hard at time of collision between two automobiles at street intersection and water on front left window of one automobile prevented its driver from seeing other automobile approaching from his left, he was guilty of "negligence" in entering intersection without taking unusual precautions.—Roselle v. Beach, 125 P.2d 77, 51 Cal.App.2d 579.—Autos 171(10).

Cal.App. 3 Dist. 1941. "Negligence" is the doing of some act which a reasonable or prudent person would not do or the omission to do something which a reasonable or prudent person would do, actuated by those considerations which ordinarily regulate the conduct of human affairs.—Spear v. Leuenberger, 112 P.2d 43, 44 Cal.App.2d 236.—Neglig 233.

Cal.App. 3 Dist. 1941. "Negligence" is the failure to use ordinary care or skill by one sought to be

charged with negligence in the management of his property or person, and is not extrinsic or absolute, but always relates to some circumstance of time, place or person.—Spear v. Leuenberger, 112 P.2d 43, 44 Cal.App.2d 236.—Neglig 232.

Cal.App. 3 Dist. 1937. Under complaint which set up in separate counts liability of owners of automobile for "wilful misconduct" toward plaintiff as guest and for "negligence" toward plaintiff as passenger, instruction denying liability in absence of negligence held error, authorizing grant of new trial, since "wilful misconduct" is something more than and different from mere "negligence." St. 1931, p. 1693, § 141½.—Ellis v. Jewett, 64 P.2d 432, 18 Cal.App.2d 629.—New Tr 39(6).

Cal.App. 3 Dist. 1935. Driving of automobile in excess of 45 miles per hour, in and of itself, is not "negligence," notwithstanding such driving may be unlawful. St.1931, p. 2120, § 113, West's Ann.Vehicle Code, §§ 22350 et seq., 40503.—Falasco v. Hulen, 44 P.2d 469, 6 Cal.App.2d 224.—Autos 168(1).

Cal.App. 3 Dist. 1935. Motorist who, because of rising ground, cannot see oncoming automobile, must exercise same care as is required of driver whose eyes are blinded by glaring lights or dazzling rays of setting sun, and failure to bring automobile under control under such conditions is "negligence". St.1931, p. 2120, § 113(a), West's Ann.Vehicle Code, §§ 22350 et seq., 40503; St.1929, p. 542, § 132, West's Ann.Vehicle Code, §§ 21804, 21806.—Falasco v. Hulen, 44 P.2d 469, 6 Cal. App.2d 224.—Autos 168(9).

Cal.App. 3 Dist. 1934. "Negligence" is a relative term, and must always be applied to the circumstances on which it is sought to be predicated.—Coppock v. Pacific Gas & Elec. Co., 30 P.2d 549, 137 Cal.App. 80.

Cal.App. 3 Dist. 1933. "Negligence" is failure to observe that degree of care, protection, and vigilance which circumstances justly demand.—Coughman v. Harman, 26 P.2d 851, 135 Cal.App. 49.—Neglig 230.

Cal.App. 3 Dist. 1933. "Negligence," of defendants placing poison for rodents in pasture was determined by what men of prudence, knowing use of field, would ordinarily do and what precautions they would take in using deadly poison.—Wolfsen v. Wheeler, 19 P.2d 1004, 130 Cal.App. 475.—Anim 44.

Cal.App. 3 Dist. 1933. "Negligence" is failure to observe, for protection of interests of another, that degree of care which circumstances justly demand, whereby such other suffers injury.—Wolfsen v. Wheeler, 19 P.2d 1004, 130 Cal.App. 475.—Neglig 230.

Cal.App. 3 Dist. 1931. "Negligence" is the omission to do something which an ordinarily prudent person would have done under the circumstances; or doing something which such a person would not have done in the same situation. It is not absolute or intrinsic, but always relates to some circumstance

of time, place, or person.—*Ramos v. Service Bros.*, 5 P.2d 623, 118 Cal.App. 432.

Cal.App. 3 Dist. 1931. Student's throwing orange from school premises through windshield of automobile held "willful misconduct," not "negligence," precluding school district's liability. *St.1923*, p. 675, § 2 (repealed. See *Gov.Code*, § 53051).—*Whiteford v. Yuba City Union High School Dist.*, 4 P.2d 266, 117 Cal.App. 462.—*Schools* 89.7.

Cal.App. 4 Dist. 1960. "Negligence" is the doing of some act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, actuated by those considerations which ordinarily regulate the conduct of human affairs, or otherwise stated, it is the failure to use ordinary care in the management of one's property or person.—*Saeter v. Harley Davidson Motor Co.*, 8 Cal.Rptr. 747, 186 Cal. App.2d 248.—*Neglig* 233.

Cal.App. 4 Dist. 1960. "Bad faith" and "negligence" are not legally synonymous.—*Davy v. Public Nat. Ins. Co.*, 5 Cal.Rptr. 488, 181 Cal.App.2d 387.—*Fraud* 1; *Neglig* 200.

Cal.App. 4 Dist. 1957. "Negligence" is an unintentional tort, a failure to exercise, in a given situation, the degree of care which a reasonable man under similar circumstances would exercise to protect others from harm, and "wilfulness" and "negligence" are contradictory terms.—*Smith v. Johnson*, 313 P.2d 7, 152 Cal.App.2d 20.—*Neglig* 233.

Cal.App. 4 Dist. 1957. To constitute actionable "negligence" three elements must occur: the legal duty to use care; a breach of that duty; and proximate causation between the breach and the injury.—*Smith v. Johnson*, 313 P.2d 7, 152 Cal.App.2d 20.—*Neglig* 202.

Cal.App. 4 Dist. 1956. "Negligence" under the Jones Act is the absence of care according to the circumstances. *Jones Act*, 46 U.S.C.A. § 688; *Federal Employers' Liability Act*, 45 U.S.C.A. § 51 et seq.—*Gonsalves v. Coito*, 300 P.2d 742, 144 Cal. App.2d 138.—*Seamen* 29(1).

Cal.App. 4 Dist. 1956. "Negligence" is the doing of some act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, actuated by those considerations which ordinarily regulate the conduct of human affairs, or otherwise stated, it is the failure to use ordinary care in the management of one's property or person.—*Cucuk v. Payne*, 296 P.2d 7, 140 Cal.App.2d 881.—*Neglig* 233.

Cal.App. 4 Dist. 1944. Violation of duty imposed by law, such as statute requiring motorist to give signal of his intention to make left turn continuously during last 50 feet traveled by automobile before turning, is "negligence." *West's Ann.Vehicle Code* §§ 22107, 22108.—*Uribe v. McCorkle*, 146 P.2d 22, 63 Cal.App.2d 61.—*Autos* 209.

Cal.App. 4 Dist. 1943. One who, in a sudden emergency, acts according to his best judgment, or

who, because of want of time in which to form a judgment, omits to act in the most judicious manner, is not chargeable with "negligence", provided he exercised in the emergency the care of a reasonably prudent individual under like circumstances.—*Reuman v. La Monica*, 136 P.2d 81, 58 Cal.App.2d 303.—*Neglig* 294.

Cal.App. 4 Dist. 1942. Exceeding the prima facie speed limit is not "negligence" as a matter of law, but excessive speed may be negligence as a matter of fact, and if it proximately causes an accident, will support a judgment against the guilty party. *Vehicle Code*, § 513, *St.1935*, p. 177, *West's Ann.Vehicle Code*, § 40831.—*Matsuda v. Luond*, 126 P.2d 359, 52 Cal.App.2d 453.—*Autos* 168(2), 201(2), 245(40.1).

Cal.App. 4 Dist. 1941. Where an owner deposits his property with another and gives the depository such indicia of ownership that a reasonable man dealing with such agent is reasonably led to believe that the agent is the owner of such property, and he parts with value in reliance thereon, the misplaced confidence is "negligence" within meaning of maxim that, where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.—*Bank of America Nat. Trust & Sav. Ass'n v. National Funding Corp.*, 114 P.2d 49, 45 Cal.App.2d 320.—*Estop* 72.

Cal.App. 4 Dist. 1940. The driver of an automobile is bound to be vigilant and watch for vehicles that might cross his path, and a failure to perform such duty may constitute "negligence."—*Stup v. Higgins*, 106 P.2d 931, 41 Cal.App.2d 379.—*Autos* 171(9), 208.

Cal.App. 4 Dist. 1939. The essence of "negligence" is failure to exercise due care and take proper precaution in particular case.—*Davidson v. American Liquid Gas Corp.*, 89 P.2d 1103, 32 Cal. App.2d 382.—*Neglig* 231.

Cal.App. 4 Dist. 1938. "Negligence" is the failure to use ordinary care or skill in the management of one's property or person.—*Jolley v. Clemens*, 82 P.2d 51, 28 Cal.App.2d 55.—*Neglig* 232.

Cal.App. 4 Dist. 1938. "Negligence" implies lack of due care.—*Adams v. Dow Hotel*, 76 P.2d 210, 25 Cal.App.2d 51.—*Neglig* 231.

Cal.App. 4 Dist. 1934. "Negligence" is doing of act which reasonably prudent person would not do, or the failure to do act, or to take some precaution which reasonably prudent person would do under circumstances.—*McKay v. Hedger*, 34 P.2d 221, 139 Cal.App. 266.—*Neglig* 233.

Cal.App. 4 Dist. 1933. "Negligence" is carelessness and tends to be negative in character, whereas "willful misconduct" is something of more positive nature involving intentional doing of wrongful act with intent to harm another with utter disregard of consequences.—*Turner v. Standard Oil Co. of Cal.*, 25 P.2d 988, 134 Cal.App. 622.—*Neglig* 275.

Cal.App. 4 Dist. 1932. "Negligence" is not absolute, but is a thing which is always relative to the particular circumstances of which it is sought to be

predicated. For this reason it is very rare that a set of circumstances is presented which enables a court to say as matter of law that negligence has been shown.—*Carrisoza v. Southern Service Co.*, 16 P.2d 1032, 128 Cal.App. 160.

Cal.App. 4 Dist. 1930. "Negligence" in a legal sense is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.—*Morse v. Douglas*, 290 P. 465, 107 Cal.App. 196.

Cal.App. 5 Dist. 1968. One doing act which a reasonably prudent person would not do, or failing to do something which reasonably prudent person would do, actuated by those considerations which ordinarily regulate conduct of human affairs, is guilty of "negligence".—*Travelers Indem. Co. v. Titus*, 71 Cal.Rptr. 490, 265 Cal.App.2d 515.—Neglig 233.

Cal.Super. 1942. A pedestrian who finds himself on his way across a street when a traffic signal changes from "go" to "stop" is not compelled to retrace his steps to safety of nearest curb, and by continuing on his journey to opposite curb he may be guilty of "negligence" but not of a "crime". West's Ann.Vehicle Code, §§ 530, 21450 et seq., 21955.—*People v. Hawkins*, 124 P.2d 691, 51 Cal. App.2d Supp. 779.—Autos 335.

Cal.Super. 1940. Where motorist who, while driving between 30 and 35 miles per hour, collided with another automobile which was standing near curb when motorist first saw it but which backed into motorist's path, was guilty, at most, of merely failing to keep a proper lookout ahead, such failure might be found to constitute "negligence" but did not amount to "reckless driving" prohibited by penal statute defining "reckless driving" as the driving in willful or wanton disregard for the safety of persons or property. West's Ann.Vehicle Code, §§ 23103, 23104.—*People v. McNutt*, 105 P.2d 657, 40 Cal.App.2d Supp. 835.—Autos 330.

Colo. 1992. "Negligence" in the abstract consists of failure to exercise reasonable care in order to protect others from harm.—*United Blood Services, a Div. of Blood Systems, Inc. v. Quintana*, 827 P.2d 509.—Neglig 233.

Colo. 1971. "Negligence" as used in statute requiring that all wrongful death actions be brought within two years from commission of alleged negligence resulting in the death for which suit is brought means the negligent act or acts which results in and gives rise to death claim. C.R.S. '63, 41-1-4.—*DeCaire v. Public Service Co.*, 479 P.2d 964, 173 Colo. 402.—Death 38.

Colo. 1956. Where actor is fully aware of danger and should realize its probable consequences, yet deliberately avoids all precautions to prevent disaster, he is guilty of "wilful and wanton" disregard, as distinguished from ordinary "negligence".—*Trujillo v. People*, 292 P.2d 980, 133 Colo. 186.—Neglig 275.

Colo. 1954. "Negligence" consists of doing something which, under the circumstances, should not have been done or in omitting to do that which should have been done.—*Maercklein v. Smith*, 266 P.2d 1095, 129 Colo. 72.—Neglig 200.

Colo. 1950. Failure to give attention to probable consequences of an act is "negligence".—*Fanstiel v. Wright*, 222 P.2d 1001, 122 Colo. 451.—Neglig 200.

Colo. 1940. "Negligence" may consist either of wrongful action or wrongful inaction.—*Pearson v. Norman*, 106 P.2d 361, 106 Colo. 396.—Neglig 200.

Colo. 1935. Generally, "negligence" has no element of willfulness, but involves inattention to character of acts or omission to weigh probable or possible consequences.—*Millington v. Hiedloff*, 45 P.2d 937, 96 Colo. 581.—Neglig 201.

Colo. 1913. An instruction, in an action against a street railroad for personal injuries, defining "negligence" as "the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand" was not misleading, in view of other instructions detailing the facts which must be found to create a liability.—*Colorado Springs & Interurban Ry. Co. v. Allen*, 135 P. 790, 55 Colo. 391.—Trial 296(12).

Colo. 1894. Law writers have classified "negligence" by such distinguishing names as "slight," "ordinary," and "gross"; to these the courts have added the term "willful." Since "negligence" means inadvertence or carelessness—words implying an absence of thought, care, or intention—it has been said that the term "willful negligence" is a misnomer. Nevertheless the term has come to have a well-settled signification in the law.—*Victor Coal Co. v. Muir*, 38 P. 378, 20 Colo. 320, 46 Am.St.Rep. 299, 26 L.R.A. 435.

Colo.App. 1970. Failure to perform statutory duty, imposed under police power of state for protection of public, or violation of express statute designed for protection of public, constitutes "negligence," but unless injury complained of is proximate result of that negligence and person injured is member of class intended to be protected, such failure to perform or such violation, standing alone, does not constitute "actionable negligence".—*Hamilton v. Gravinsky*, 474 P.2d 185, 28 Colo.App. 408, opinion modified 483 P.2d 385, 174 Colo. 206.—Neglig 259, 409.

Colo.App. 1970. "Negligence" consists of failure to observe reasonable standards of care which circumstances of particular situation require.—*Franklin v. Nolan*, 472 P.2d 166, 28 Colo.App. 229.—Neglig 233.

Conn. 1998. Comparative negligence statute does not allow apportionment of liability between negligent and intentional tortfeasors; term "negligence," as used in statute, cannot be construed to encompass conduct other than negligence. C.G.S.A. § 52-572h.—*Bhinder v. Sun Co., Inc.*, 717 A.2d 202, 246 Conn. 223.—Neglig 549(7).

Conn. 1976. "Negligence" is the failure to use reasonable care under the circumstances and the engaging in conduct which creates an undue risk of harm.—Hoelter v. Mohawk Service, Inc., 365 A.2d 1064, 170 Conn. 495.—Neglig 233.

Conn. 1975. Test of conduct amounting to "negligence" within meaning of Uniform Commercial Code provision, that any person who by his negligence substantially contributes to making of unauthorized signature is precluded from asserting lack of authority against drawee, was whether prudent person in position of depositor's manager, having at his disposal only information and experience manager had concerning purported loan applications made to depositor, a finance company, would have foreseen danger of subsequent forgery by salesman who submitted written loan applications on basis of which manager issued checks. C.G.S.A. § 42a-3-406.—Fidelity & Cas. Co. of New York v. Constitution Nat. Bank, 356 A.2d 117, 167 Conn. 478.—Banks 148(3).

Conn. 1969. "Negligence" is failure to conform one's conduct to standard of duty prescribed by legislative authority or to conform it to common-law requirement to exercise reasonable care under circumstances.—Guglielmo v. Klausner Supply Co., 259 A.2d 608, 158 Conn. 308.—Neglig 233, 238.

Conn. 1953. When legislature establishes rule of conduct by statute for purpose of protecting others from injury, violation of such rule of conduct constitutes "negligence".—Essam v. New York, N. H. & H. R. Co., 99 A.2d 138, 140 Conn. 319.—Neglig 259.

Conn. 1943. It is the duty of a landlord to use reasonable care to keep those parts of the building retained under his control in a reasonably safe condition, and failure to perform that duty when he has actual or constructive notice of the defect is "negligence".—Wade v. Yale University, 30 A.2d 545, 129 Conn. 615.—Land & Ten 164(1), 164(6).

Conn. 1943. An "accident" is an unexpected happening, whereas "negligence" is based on something reasonably to be anticipated.—Higgins v. Connecticut Light & Power Co., 30 A.2d 388, 129 Conn. 606.—Neglig 213.

Conn. 1942. "Negligence" consists in a failure to exercise due care, and, to a nuisance grounded on negligence, contributory negligence is for that reason an appropriate defense.—Beckwith v. Town of Stratford, 29 A.2d 775, 129 Conn. 506.—Neglig 231; Nuis 43.

Conn. 1939. "Wanton misconduct" is more than "negligence" or "gross negligence"; it is such conduct as indicates a reckless disregard of just rights or safety of others or of consequences of action.—Decker v. Roberts, 3 A.2d 855, 125 Conn. 150.—Neglig 275.

Conn. 1935. "Negligence" occurs where one under duty to exercise a certain degree of care to avoid injury to others fails to do so.—Dean v. Hershowitz, 177 A. 262, 119 Conn. 398.—Neglig 250.

Conn. 1910. "Negligence" involves the violation of a legal duty which one owes to another in respect to care for the safety of the person or property of that other.—Sharkey v. Skilton, 77 A. 950, 83 Conn. 503.

Conn. 1909. "Negligence" is the failure to exercise that degree of care under given circumstances which one of ordinary prudence would exercise under similar circumstances, and the circumstances considered are those which are known to the actor, but he will be charged with knowledge of what he could have known by exercising ordinary care.—Stedman v. O'Neil, 72 A. 923, 82 Conn. 199, 22 L.R.A.N.S. 1229.—Neglig 232.

Conn. 1909. "Negligence" consists of the failure to use ordinary care and prudence under the circumstances. One who has a reasonable basis for belief that another is aware of a source of danger may act on the assumption that the latter is aware of it, and will make reasonable efforts to save himself; but a motorman having a reasonable basis for the belief that an adult person on the track is aware of the approach of the car may presume that he will get out of danger as the car approaches; but a motorman sounding his bell cannot assume that all within hearing will take notice that a car is approaching, and he can make no such assumption in justification of his failure to take reasonable precautions until at least he has reasonable grounds for believing that his warning is heeded or the presence of the car recognized, and that the person threatened is competent to protect himself by the exercise of ordinary care.—Riley v. Consolidated Ry. Co., 72 A. 562, 82 Conn. 105, 21 L.R.A.N.S. 880.

Conn. 1907. "Negligence" which is actionable, is the infringement of the legal right of another, or in other words the violation of a duty imposed by law in respect to another. The mere neglect of a railroad company to cut down trees on its right of way in the vicinity of a grade crossing is not in itself such "negligence," in the absence of any statute requiring it to keep its right of way free from unnecessary obstruction to a view of the tracks by persons using an adjacent highway, although it may be considered with other circumstances in determining whether the company exercised care in the operation of its cars at a particular time.—Cowles v. New York, N.H. & H.R. Co., 66 A. 1020, 80 Conn. 48.

Conn. 1898. "Negligence" is frequently used to express the cause of action where a party seeks redress for injury from an unintentional wrongful act. In the nomenclature of the common law, this is called "a cause of action enforceable by the action of trespass on the case"—"trespass," as signifying a passing over or beyond our right (that is, a transgression or wrongful act); "trespass on the case," as signifying a form of action devised to cover all cases where an actionable wrong is claimed under the particular circumstances of the stated case. "Negligence," so used, is a comparatively modern term of art, denoting a class of actions grouped under one head for the purpose of study and treatment. It covers the injury received; the act done, positive or

negative; the proximate relation of the act to the injury; the legal rule of liability applicable to the case stated; and the application of that rule. The numerous definitions of actionable negligence attempt to state briefly and comprehensively the conditions essential to all of this group of actions. "Negligence" is also used to denote the conception of moral blame or fault imputed to a person legally liable for the consequences of an unintentional act.—*Nolan v. New York, N. H. & H. R. Co.*, 39 A. 115, 70 Conn. 159, 43 L.R.A. 305.

Conn. 1894. The term "negligence" is used by courts and by text-writers with some indefiniteness of meaning. Sometimes it is applied to an act, and sometimes to the consequences of an act, and at other times to an act and its consequences taken together. In the first of these instances, the word is correlative to "diligence"; in the second, to "intention." In this sense it is practically synonymous with "heedlessness" or "carelessness"—the not taking notice of matters relevant to the business in hand, of which notice might and ought to have been taken. 2 *Steph.Cr.Law*, p. 123; 1 *Aust.Jur.* p. 440. In civil proceedings, acts, including omissions, apart from their consequences, are indifferent. It is only when an act occasions injury to another that the person doing the act becomes liable in damages to the person injured by the act. In such cases the act and its consequences are blended together, and the term "negligent injury," or simply "negligence," is applied. It is an essential ingredient of actionable negligence that the injury be the result of inadvertence or inattention. Negligence signifies a want of care in the performance of an act, by one having no positive intention to injure the person complaining of it. Where such an intention exists, the injury ceases to be merely a negligent one, and becomes one of violence or fraud; i. e., a malicious one.—*Pitkin v. New York & N. E. R. Co.*, 30 A. 772, 64 Conn. 482.

Conn.Super. 1999. "Negligence" is defined as a breach of duty, and the existence of a duty is a question of law.—*Beach v. Jean*, 746 A.2d 228, 46 Conn.Sup. 252.—*Neglig* 250, 1692.

Conn.Super. 1992. "Negligence" is breach of duty.—*Turner v. Smith*, 614 A.2d 1268, 42 Conn. Sup. 206, reargument denied 1992 WL 310630.—*Neglig* 250.

Conn.Super. 1983. "Negligence" is breach of duty to exercise due care, and ultimate test of existence of duty to use due care is found in foreseeability that harm may result if it is not exercised.—*Pinto v. Bridgeport Mack Trucks, Inc.*, 458 A.2d 696, 38 Conn.Sup. 639.—*Neglig* 213.

Conn.Super. 1982. "Negligence" is the failure to use that degree of care for the protection of another that the ordinarily reasonably careful and prudent man would use under like circumstances.—*State v. Russo*, 450 A.2d 857, 38 Conn.Sup. 426.—*Neglig* 233.

Conn.Super. 1964. "Negligence" occurs where one under duty to exercise certain degree of care to avoid injury to others fails to do so.—*Cieszynski v.*

Franklin Corp., 203 A.2d 676, 25 Conn.Sup. 342.—*Neglig* 250.

Conn.Cir.A.D. 1967. "Negligence" is a breach of duty.—*Callender v. Lakewood Realty Co.*, 237 A.2d 106, 4 Conn.Cir.Ct. 556.—*Neglig* 250.

Del.Supr. 1941. "Negligence" is a breach of duty whether imposed by rule of the common law or by statute.—*State, to Use of Henderson, v. Clark*, 20 A.2d 127, 41 Del. 246, 2 Terry 246, 138 A.L.R. 704.—*Neglig* 222, 250.

Del.Supr. 1941. "Negligence" in general is tested by the reasonable foreseeability of an event which may result in injury and failure to guard against a reasonably to be expected danger is negligence.—*State, to Use of Henderson, v. Clark*, 20 A.2d 127, 41 Del. 246, 2 Terry 246, 138 A.L.R. 704.—*Neglig* 213.

Del.Supr. 1904. "Negligence" in a legal sense is a failure to observe, for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. While the obligation to exercise care in the conduct of one's business varies under different circumstances, there always remains the duty to exercise such reasonable care as should be exercised by a person of ordinary prudence under like circumstances.—*Szymanski v. Blumenthal*, 56 A. 674, 20 Del. 511, 4 Penne. 511, 103 Am.St.Rep. 132.

Del.O. & T. 1942. "Negligence", generally, is the failure to exercise that degree of care and caution which a reasonably prudent and careful person would exercise in similar circumstances.—*State v. Arnold*, 27 A.2d 81, 42 Del. 47, 3 Terry 47.—*Neglig* 233.

Del.O. & T. 1942. "Negligence", generally speaking, is negative in character and implies non-feasance and its distinguishing characteristic is thoughtlessness, inattention, or inadvertence.—*State v. Arnold*, 27 A.2d 81, 42 Del. 47, 3 Terry 47.—*Neglig* 200.

Del.O. & T. 1939. A motorist's failure to see what is plainly visible is "negligence" since he is not only required to look, but is required to exercise his sense of sight in such careful and intelligent manner as will enable him to see things which a person in exercise of ordinary care and caution would see under like circumstances.—*State v. Elliott*, 8 A.2d 873, 40 Del. 250, 1 Terry 250.—*Autos* 330.

Del.Super. 1978. Fact that driver of westbound fire truck, which collided with southbound pickup truck, as fire truck, while responding to fire alarm, attempted to cross southbound lanes after passing through northbound lanes and median strip while traffic light was red, had entered intersection, while exceeding speed limit, without looking to his right to see if there was oncoming traffic in southbound lanes and failed, when he did look, to see pickup truck, which was in plain view, was "negligence." 21 Del.C. § 4106(b)(3).—*Green v. Millsboro Fire Co., Inc.*, 385 A.2d 1135, affirmed in part, reversed in part 403 A.2d 286.—*Autos* 175(4).

Del.Super. 1974. "Negligence" is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances, or failure to do what a person of ordinary prudence would have done under similar circumstances.—*Amoco Chemical Corp. v. Hill*, 318 A.2d 614.—Neglig 233.

Del.Super. 1970. "Wilful and wanton conduct causing death" is included within terms "unlawful violence" or "negligence", which are actionable under wrongful death statute, and refusal to permit, as not authorized under wrongful death act, amendment to complaint which would have added an allegation of wilful and wanton conduct, in action against automobile dealer who sold deceased a vehicle with defective brakes, was error. Superior Court Rules, Civil rule 15, Del.C. Ann.; 10 Del.C. § 3704(b).—*Gott v. Newark Motors, Inc.*, 267 A.2d 596.—Death 14(1), 55.

Del.Super. 1954. Failure to exercise such care as a reasonably prudent and careful person would exercise under similar circumstances constitutes "negligence."—*Deangelis v. U. S. A. C. Transport*, 105 A.2d 458, 48 Del. 405, 9 Terry 405.—Neglig 233.

Del.Super. 1954. "Negligence" is the want of due care or the want of such care as a reasonably prudent and careful person would use under similar circumstances.—*Kane v. Reed*, 101 A.2d 800, 48 Del. 266, 9 Terry 266.—Neglig 233.

Del.Super. 1952. "Negligence" is the want of such care as a reasonably prudent and careful person would use under similar circumstances, and the care required in each case is proportioned to the danger and must be such as an ordinarily prudent person would use in a like case.—*Burk v. Artesian Water Co.*, 91 A.2d 545, 47 Del. 405, 8 Terry 405.—Neglig 233.

Del.Super. 1942. In the absence of special circumstances requiring the exercise of greater care, by sound reason and public convenience it is not "negligence" to start a public conveyance while passengers are standing within it or are on their way to seat.—*Cannon v. Delaware Electric Power Co.*, 24 A.2d 325, 41 Del. 415, 2 Terry 415.—Carr 287(5).

Del.Super. 1942. The omission to do that which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or the doing of something which such a man would not do is "negligence", and a reasonable foresight of harm is essential to its concept.—*Cannon v. Delaware Electric Power Co.*, 24 A.2d 325, 41 Del. 415, 2 Terry 415.—Neglig 233.

Del.Super. 1941. The failure to either ward off sleep or to cease such a dangerous activity as the operation of an automobile, after having been warned of the imminence of sleep, constitutes "negligence."—*Diamond State Tel. Co. v. Hunter*, 21 A.2d 286, 41 Del. 336, 2 Terry 336.—Autos 157.

Del.Super. 1938. "Negligence" is the performance or the omission of some act in violation of a legal duty and implies a blameworthy antecedent inadvertence to possible harm.—*Massey v. Worth*, 197 A. 673, 39 Del. 211, 9 W.W.Harr. 211.—Neglig 250.

Del.Super. 1937. "Negligence" is relative term, depending on particular facts and circumstances.—*Lynch v. Lynch*, 195 A. 799, 39 Del. 1, 9 W.W.Harr. 1.—Neglig 200.

Del.Super. 1937. "Negligence" is the lack of ordinary care under the circumstances; the failure to exercise such care and caution as a reasonably careful and prudent man would have exercised under similar circumstances.—*Elliott v. Camper*, 194 A. 130, 38 Del. 504, 8 W.W.Harr. 504.

Del.Super. 1937. "Negligence" is the failure to observe for the protection of interests of another that degree of care, precaution, and vigilance which the particular circumstances justly demand, whereby such other person suffers injury.—*Bowing v. Delaware Rayon Co.*, 192 A. 598, 38 Del. 339, 8 W.W.Harr. 339.

Del.Super. 1937. "Negligence" is failure to exercise degree of caution and care in given situation which reasonably prudent and careful person would exercise in like circumstances, omission to do something which reasonable man, guided by considerations ordinarily regulating conduct of human affairs, would do, or doing of something which reasonable and prudent person would not do.—*Biddle v. Haldas Bros.*, 190 A. 588, 38 Del. 210, 8 W.W.Harr. 210.—Neglig 233.

Del.Super. 1936. Word "negligence" is used when defendant is referred to, and words "contributory negligence" are used when referring to plaintiff, and what would be negligence if committed by defendant would likewise be negligence if committed by plaintiff.—*Willis v. Schlagenhauf*, 188 A. 700, 38 Del. 96, 8 W.W.Harr. 96.—Neglig 502(2).

Del.Super. 1936. "Negligence" is merely disregard of duty imposed by law, and nature and extent of duty may be modified by legislation with corresponding change in test of negligence.—*Gallegher v. Davis*, 183 A. 620, 37 Del. 380, 7 W.W.Harr. 380.—Neglig 210, 238.

Del.Super. 1936. Legislature may regulate duty between automobile operator and guest beyond "gross negligence," since there are no degrees of negligence, and classification of "negligence" as "gross," "ordinary," and "slight" indicates only that under special circumstances great care and caution, or ordinary care, or slight care are required, but failure to exercise care demanded is "negligence". 38 Del.Laws, c. 26.—*Gallegher v. Davis*, 183 A. 620, 37 Del. 380, 7 W.W.Harr. 380.—Autos 5(1).

Del.Super. 1936. Under statute restricting actions by guests against owners or operators of automobiles to intentional accidents or those caused by willful or wanton disregard of rights of others, "negligence" is eliminated as basis of liability, since "willfulness" or "wantonness" and "negligence" are incompatible terms. 38 Del.Laws, c. 26.—*Gallegher*

v. Davis, 183 A. 620, 37 Del. 380, 7 W.W.Harr. 380.—Autos 181(1).

Del.Super. 1935. "Negligence" is relative term, depending on particular facts and circumstances.—Thompson v. Cooles, 180 A. 522, 37 Del. 83, 7 W.W.Harr. 83.—Neglig 200.

Del.Super. 1935. "Negligence" is the failure to observe for the protection of the interest of another the degree of care, prudence, and vigilance which the circumstances demand.—Thompson v. Cooles, 180 A. 522, 37 Del. 83, 7 W.W.Harr. 83.—Neglig 230.

Del.Super. 1927. Negligence, to constitute ground for recovery, must be proximate cause of plaintiff's injuries, and it must be proved by "preponderance of evidence," which is the greater weight and value of testimony in judgment of jury, "negligence" being want of due care such as ordinarily prudent man would exercise under like circumstances.—Hendrickson v. Continental Fibre Co., 140 A. 659, 33 Del. 564, 3 W.W.Harr. 564.

Del.Super. 1927. "Negligence" is failure to use care prudent man would use.—Gray v. Pennsylvania R. Co., 139 A. 66, 33 Del. 450, 3 W.W.Harr. 450.—Neglig 233.

Del.Super. 1921. "Negligence" is the want of ordinary care, that is, the want of such care as a reasonably prudent and careful person would exercise under like circumstances.—Wollaston v. Stiltz, 114 A. 198, 31 Del. 273, 1 W.W.Harr. 273.

Del.Super. 1919. In action against railroad for injuries to a passenger through the negligence of its conductor in telling her to get off the train, supposedly at a station, plaintiff cannot recover, unless her injuries were caused by the negligence of the railroad, "negligence" being want of ordinary care, such as an ordinarily prudent and careful person would use under like circumstances, including knowledge of plaintiff's physical and mental condition.—Clayton v. Philadelphia, B. & W.R. Co., 106 A. 577, 30 Del. 343, 7 Boyce 343.—Carr 303(1).

Del.Super. 1918. In actions based on negligence, the burden of proof is on plaintiff; "negligence," which is the want of due care, or such care as an ordinarily prudent man would exercise under like circumstances, being never presumed.—Kemp v. McNeill Cooperage Co., 104 A. 639, 30 Del. 146, 7 Boyce 146.

Del.Super. 1915. In an action by a passenger against a railroad for personal injuries received while leaving a train, the burden of proving the carrier's negligence, was on plaintiff; "negligence" being failure to exercise such care as a reasonably careful person would use under similar circumstances.—Behen v. Philadelphia, B. & W.R. Co., 93 A. 903, 28 Del. 389, 5 Boyce 389.

Del.Super. 1915. "Negligence," which is the failure to use such care as a reasonably prudent person would exercise under similar circumstances, is not presumed, and must be proven by the party alleging it.—Walls v. Windsor, 92 A. 989, 28 Del. 265, 5 Boyce 265.

Del.Super. 1914. "Negligence" is the failure to observe for the protection of the interest of another the degree of care, prudence, and vigilance which the circumstances demand.—Reynolds v. Clark, 92 A. 873, 28 Del. 250, 5 Boyce 250.—Neglig 230.

Del.Super. 1912. "Negligence" is the want of ordinary care, viz., such care as a reasonably prudent and careful person would exercise under similar circumstances. It is never presumed but must be proved; and the burden of proving it rests on the party alleging it. It may arise from overt acts, or from the failure to perform a duty.—Bowen v. Baltimore & Philadelphia Steamboat Co., 84 A. 1022, 26 Del. 428, 3 Boyce 428.

Del.Super. 1912. "Negligence" is the failure to observe for the protection of the interest of another the degree of care, prudence, and vigilance which the circumstances demand.—Warren v. Harlan & Hollingsworth Corporation, 84 A. 215, 26 Del. 182, 3 Boyce 182.—Neglig 230.

Del.Super. 1912. "Negligence" is the failure to observe for the protection of the interest of another the degree of care, prudence, and vigilance which the circumstances demand.—Culbert v. Wilmington & P. Traction Co., 82 A. 1081, 26 Del. 253, 3 Boyce 253.—Neglig 230.

Del.Super. 1912. "Negligence" is the failure to observe for the protection of the interest of another the degree of care, prudence, and vigilance which the circumstances demand.—Riccio v. People's Ry. Co., 82 A. 604, 26 Del. 235, 3 Boyce 235.—Neglig 230.

Del.Super. 1911. "Negligence" is the failure to observe for the protection of the interest of another the degree of care, prudence, and vigilance which the circumstances demand.—Gatta v. Philadelphia, B. & W.R. Co., 83 A. 788, 25 Del. 551, 2 Boyce 551.—Neglig 230.

Del.Super. 1911. "Negligence" is the want of due care; that is, of such care as an ordinarily prudent man would exercise under the same or similar circumstances.—Seininski v. Wilmington Leather Co., 83 A. 20, 26 Del. 288, 3 Boyce 288.

Del.Super. 1911. "Negligence" is the lack or want of ordinary care.—Tobias v. People's Ry. Co., 80 A. 358, 26 Del. 59, 3 Boyce 59.

Del.Super. 1911. "Negligence" is the want of the ordinary care which a reasonably prudent man would exercise under like circumstances.—Butler v. Wilmington City Ry. Co., 78 A. 871, 25 Del. 262, 2 Boyce 262.

Del.Super. 1910. "Negligence" is the want of reasonable care, or a failure to use such care as an ordinarily careful man would use in like circumstances.—Klair v. Philadelphia, B. & W.R. Co., 78 A. 1085, 25 Del. 274, 2 Boyce 274.

Del.Super. 1910. "Negligence" has often been defined by the court to be the want of ordinary care; that is, the want of such care as a reasonably prudent and careful man would use under similar circumstances. Recovery on the ground of negligence may be had for suddenly starting a street car

while a passenger is in the act of alighting therefrom, if it is shown to be the fault of the company, and that injuries to the passenger were caused thereby.—*Benson v. Wilmington City Ry. Co.*, 75 A. 793, 24 Del. 202, 1 Boyce 202.

Del.Super. 1910. "Negligence" is the want of such care as a reasonably prudent and careful person would exercise under similar circumstances. Certain things are negligence in law, whether active or positive negligence is proved or not. A violation of a statute providing that no person shall operate a motor vehicle on the public highways unless he has obtained a license is negligence per se, and renders the wrongdoer liable for an injury resulting from such misconduct.—*Cecchi v. Lindsay*, 75 A. 376, 24 Del. 185, 1 Boyce 185, reversed 80 A. 523, 26 Del. 133, 3 Boyce 133, 35 L.R.A.N.S. 699.

Del.Super. 1908. "Negligence" is the want of ordinary care; want of such care as a reasonably prudent and careful man would exercise under the circumstances.—*Short v. Philadelphia, B. & W.R. Co.*, 76 A. 363, 23 Del. 108, 7 Penne. 108.

Del.Super. 1908. "Negligence" has been variously defined by the courts of this state; but, after all, the different definitions mean substantially one and the same thing. It has been termed the want of ordinary care; that is, the want of such care as a reasonably prudent and careful man would exercise under similar circumstances. It has been termed the failure to observe, for the protection of the interests of another, that degree of care, prudence, and vigilance which the circumstances justly demand, whereby such other person suffers injury.—*Lenkewicz v. Wilmington City Ry. Co.*, 74 A. 11, 23 Del. 64, 7 Penne. 64.

Del.Super. 1907. "Negligence" is the failure to use such care as a reasonably prudent man would or should use under similar circumstances.—*Heidelbaugh v. People's Ry. Co.*, 65 A. 587, 22 Del. 209, 6 Penne. 209.

Del.Super. 1906. "Negligence" is the failure to use such care as a reasonably prudent and careful person should exercise under similar circumstances.—*Robinson v. Huber*, 63 A. 873, 22 Del. 21, 6 Penne. 21.

Del.Super. 1905. "Negligence," in a legal sense, has been defined to be the failure to observe, for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. In an action for injuries to a servant while riding on a private railroad by derailment of the cars and the fall of a car frame, caused by a defective bolt used to fasten the same, defendant was not guilty of negligence, in failing to promulgate rules for the government of its servants in the operation of cars on the railroad in question.—*Jemnienski v. Lobdell Car Wheel Co.*, 63 A. 935, 21 Del. 385, 5 Penne. 385.

Del.Super. 1905. "Negligence" has been termed the want of ordinary care; that is, the want of such care as a reasonably prudent and careful man would exercise under similar circumstances. It has

been termed the failure to observe, for protection of the interest of another, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.—*Goldstein v. People's Ry. Co.*, 60 A. 975, 21 Del. 306, 5 Penne. 306.

Del.Super. 1904. "Negligence" has been termed the want of ordinary care; that is, the want of such care as a reasonably prudent and careful man would exercise under similar circumstances. It has been termed the failure to observe, for the protection of the interests of another, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.—*Di Prisco v. Wilmington City Ry. Co.*, 57 A. 906, 20 Del. 527, 4 Penne. 527.

Del.Super. 1902. "Negligence" is the want of ordinary care; that is, the want of such care as a reasonably prudent and careful man would exercise under like circumstances. What constitutes "negligence" is a question of law for the court, but whether "negligence" existed in the particular case is a question of fact for the jury.—*Neal v. Wilmington & N.C. Electric Ry. Co.*, 53 A. 338, 19 Del. 467, 3 Penne. 467.

D.C. 2002. "Negligence," for purposes of an action under FELA by injured railroad employee, may be defined as the failure of a railroad's agents to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation. Federal Employers' Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.—*National R.R. Passenger Corp. v. McDavitt*, 804 A.2d 275.—*Emp Liab 11*.

D.C. 1994. Under FELA, "negligence" is failure of railroad's agents to do what reasonable and prudent man would ordinarily have done under circumstances of situation. Federal Employers' Liability Act, §§ 1-10, as amended, 45 U.S.C.A. §§ 51-60.—*McMillan v. National R.R. Passenger Corp.*, 648 A.2d 428.—*Emp Liab 11*.

D.C. 1976. "Negligence" consists of "conduct" (an act or failure to perform an act) from which the reasonably prudent man in the exercise of ordinary care would refrain.—*McCord v. Green*, 362 A.2d 720.—*Neglig 233*.

D.C.App. 1969. "Negligence" requires showing of breach of duty owed to injured person resulting in injury which, by observance of due care, could have been avoided.—*Baker v. D. C. Transit System, Inc.*, 248 A.2d 829.—*Neglig 202*.

Fla. 1952. "Negligence" is failure to observe, for protection of another's interest, such care, precaution and vigilance as circumstances justly demand or failure to do what a reasonable and prudent person would ordinarily have done under circumstances or doing of what such person would have done under circumstances.—*De Wald v. Quarnstrom*, 60 So.2d 919.—*Neglig 233*.

Fla. 1940. It is difficult, if not impossible to define degrees of "negligence" so that distinctions made by classifications or definitions would be helpful in determining particular cases in litigation,

and each case must be determined on its particular facts.—*Winthrop v. Carinhas*, 195 So. 399, 142 Fla. 588.—*Neglig* 272.

Fla. 1940. As used in automobile guest statute in connection with the words “or willful and wanton misconduct,” the words “gross negligence” mean a greater degree of negligence than ordinary “negligence”, or than the mere lack of ordinary care under the circumstances, judged by the usual standards of reasonably prudent conduct, and the words “willful and wanton misconduct” mean at least as great a degree of want of due care as “gross negligence,” and may also imply a concurring mental process. Acts 1937, c. 18033, § 1.—*Winthrop v. Carinhas*, 195 So. 399, 142 Fla. 588.—*Autos* 181(1).

Fla. 1939. “Negligence” is the failure to observe, for the protection of another’s interest, such care, precaution and vigilance as the circumstances justly demand, or the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances or the doing of what such a person would not have done under the circumstances.—*Russ v. State*, 191 So. 296, 140 Fla. 217.—*Neglig* 233.

Fla. 1931. Failure to observe reasonable care, precaution, and vigilance as circumstances justly demand for protection of another’s interest, resulting in injury, constitutes “negligence.”—*Seaboard Air Line Ry. Co. v. Watson*, 137 So. 719, 103 Fla. 477, appeal dismissed 53 S.Ct. 32, 287 U.S. 86, 77 L.Ed. 180, 86 A.L.R. 174.—*Neglig* 233.

Fla. 1929. “Negligence” is failure to exercise degree of care demanded by circumstances. “Negligence” is a failure to exercise the degree of care demanded by the circumstances.—*Smith v. Hinkley*, 123 So. 564, 98 Fla. 132.—*Neglig* 1.

Fla. 1929. “Negligence” is failure to exercise degree of care demanded by circumstances.—*Smith v. Hinkley*, 123 So. 564, 98 Fla. 132.—*Neglig* 230.

Fla. 1923. “Negligence” constituting a cause of civil action is the failure to observe, for the protection of another’s interest, such care and vigilance as the circumstances justly demand, and the want of which causes such other’s injury.—*Tampa Electric Co. v. Bazemore*, 96 So. 297, 85 Fla. 164.—*Neglig* 201.

Fla. 1922. Actionable “negligence” arises where injury to one person is proximately caused by the failure of another to exercise such reasonable care and diligence as should have been exercised under the circumstances in view of the relation of the parties to each other at the time, and the complaining party is not guilty of such contributory negligence as bars recovery under the law applicable to the case.—*Carter v. J. Ray Arnold Lumber Co.*, 91 So. 893, 83 Fla. 470.

Fla. 1918. “Negligence” is the failure to observe for the protection of another’s interests such care, precaution, and vigilance as the circumstances justly demand.—*Georgia, F. & A. Ry. Co. v. Cox*, 79 So. 276, 75 Fla. 714.

Fla.App. 1 Dist. 1984. As grounds for disciplinary action in the practice of veterinary medicine, “negligence” and “incompetency” mean a failure to comply with the minimum standard of care or treatment required of a veterinarian under the circumstances. West’s F.S.A. § 474.214(1)(q).—*Purvis v. Department of Professional Regulation, Bd. of Veterinary Medicine*, 461 So.2d 134.—*Health* 205.

Fla.App. 1 Dist. 1976. Word “careless,” within meaning of statute providing that owner of dog is not liable for injuries caused by dog if injured person carelessly provoked or aggravated dog, is synonymous with term “negligence,” as customarily employed in tort action. West’s F.S.A. § 767.04.—*Harris v. Moriconi*, 331 So.2d 353, certiorari dismissed 341 So.2d 1084.—*Anim* 71.

Fla.App. 1 Dist. 1965. Where the exercise of ordinary care is required, “negligence” is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances, or the doing of what a reasonable and prudent person would not have done under the circumstances, resulting in injury to another.—*Gresham v. Courson*, 177 So.2d 33.—*Neglig* 232.

Fla.App. 1 Dist. 1960. “Negligence” is the doing of something that a reasonable and prudent person would not ordinarily do under the same or similar circumstances or the failure to do that which a reasonable and prudent person would have done under the same or similar circumstances.—*Russell v. Jacksonville Gas Corp.*, 117 So.2d 29.—*Neglig* 233.

Fla.App. 2 Dist. 1966. “Negligence” is a breach of a legal duty.—*Drady v. Hillsborough County Aviation Authority*, 193 So.2d 201, certiorari denied 210 So.2d 223.—*Neglig* 250.

Fla.App. 2 Dist. 1963. “Negligence” is that course of conduct which a reasonable and prudent person would know might possibly result in injury to persons or property.—*Frank v. Lurie*, 157 So.2d 431.—*Neglig* 233.

Fla.App. 2 Dist. 1958. “Negligence” when applied to malpractice by a physician or surgeon consists in his doing something which he should not have done, or omitting to do something which he should have done, or his failure to exercise the required degree of care, skill and diligence.—*Atkins v. Humes*, 107 So.2d 253, quashed 110 So.2d 663, 81 A.L.R.2d 590.—*Health* 623.

Fla.App. 3 Dist. 1972. “Negligence” is the failure to use that degree of care, diligence and skill that is one’s legal duty to use in order to protect another person from injury.—*Miriam Mascheck, Inc. v. Mausner*, 264 So.2d 859.—*Neglig* 230.

Ga. 1976. “Negligence” consists of exposing another to whom one owes a duty, or exposing oneself, to a foreseeable unreasonable probability of harm; reasonable foresight does not require of a plaintiff or defendant that he anticipate exactly that which will happen and exercise perfect judgment to prevent injury.—*Ellington v. Tolar Const. Co.*, 227 S.E.2d 336, 237 Ga. 235, conformed to 229 S.E.2d

507, 139 Ga.App. 691, appeal after remand 235 S.E.2d 729, 142 Ga.App. 218.—Neglig 210, 213, 504.

Ga. 1948. The “negligence” necessary to constitute crime of involuntary manslaughter is equivalent of “recklessness”. Code §§ 26–201, 26–404, 26–1009.—Geele v. State, 47 S.E.2d 283, 203 Ga. 369.—Homic 708.

Ga. 1909. The absence of “ordinary diligence,” defined by Civ.Code 1895, § 2898, as that care which every prudent man takes of his own property of a similar nature, is termed “neglect.” Objection has sometimes been made to the qualifying words “slight,” “ordinary,” and “gross,” as applicable to negligence, and the courts of some jurisdictions have preferred to use the term “ordinary neglect,” or “negligence,” as applicable to a want of due care under the circumstances, maintaining that at last “ordinary diligence” in the light of the circumstances is all that is required.—Southern Ry. Co. v. Davis, 65 S.E. 131, 132 Ga. 812.

Ga. 1908. “Negligence,” relatively to the safety of any particular person, is the breach of some diligence due to that person. Where no duty of diligence appears relatively to the person injured, there can be no presumption of its breach. “Negligence” causing an injury does not give a right of action to the person injured, unless there is some diligence due to such person at the time with reference to the particular conduct in question.—Southern Ry. Co. v. Cash, 62 S.E. 823, 131 Ga. 537.

Ga. 1906. “Negligence” is defined as “the unintentional failure to perform a duty implied by law, whereby damage naturally and proximately results to another.”—Southern Ry. Co. v. Chatman, 53 S.E. 692, 124 Ga. 1026, 6 L.R.A.N.S. 283.

Ga. 1898. The expression “without fault,” as used in the Code, referring to actions for injuries by an employé, means the same as “without negligence,” and the words “fault” and “negligence” in this connection are synonymous.—Savannah, F. & W. Ry. Co. v. Austin, 30 S.E. 770, 104 Ga. 614.

Ga.App. 1975. “Negligence” is omission to do something which a reasonable man would do when guided by those ordinary considerations which ordinarily regulate human affairs.—Ferrell v. Haas, 220 S.E.2d 771, 136 Ga.App. 274.—Neglig 233.

Ga.App. 1972. “Negligence” consists of not foreseeing and guarding against that which is probable and likely to happen, not against that which is only remotely and slightly possible.—Eckerd-Walton, Inc. v. Adams, 190 S.E.2d 490, 126 Ga.App. 210.—Neglig 213.

Ga.App. 1962. “Negligence” consists of failure to perform duty owed to someone.—Underwood v. Atlanta & W. P. R. Co., 124 S.E.2d 758, 105 Ga.App. 340, affirmed in part, reversed in part 126 S.E.2d 785, 218 Ga. 193, on remand 127 S.E.2d 318, 106 Ga.App. 467.—Neglig 250.

Ga.App. 1959. Under Ohio law, “negligence” and “wanton misconduct” are not merely distinguishable by the degree of care exercised but are

different species of dereliction and “wanton misconduct” arises out of a tendency to perversity while “negligence” arises from inadvertence or failure to exercise care.—Hamby v. Hamby, 110 S.E.2d 133, 99 Ga.App. 808.—Neglig 200, 275.

Ga.App. 1952. “Negligence” consists either of the omission to do an act which ought to be done, or the omission to perform properly what one undertakes to do. Ga.Code Ann. § 105–201.—Womack v. Central Ga. Gas Co., 70 S.E.2d 398, 85 Ga.App. 799.—Neglig 200.

Ga.App. 1942. Automobile service station operators, placing abandoned truck on vacant lot adjoining their premises and allowing it to remain thereon, without completely draining its gasoline tank or warning young children, accustomed to playing on such lot with such operators’ knowledge, that truck was dangerous, were not guilty of “negligence” rendering them liable under “attractive nuisance” doctrine for injuries to and resulting death of boy because of explosion of tank when another boy, with whom decedent was playing around truck, struck a match near tank.—Hornsby v. Henry, 22 S.E.2d 326, 68 Ga.App. 171.—Explos 8.

Ga.App. 1941. “Willful misconduct” or “willful failure or refusal to perform a duty required by statute” within codal provision denying compensation for injury or death in such cases is more than “negligence”, or even “gross negligence”, and involves conduct of a criminal or quasi criminal nature, the intentional doing of something either with the knowledge that it is likely to result in serious injury or with a wanton and reckless disregard of its probable consequences. Code, § 114–105.—Gooseby v. Pinson Tire Co., 16 S.E.2d 767, 65 Ga.App. 837.—Work Comp 776, 780.

Ga.App. 1941. Mere violations of instructions, orders, rules or ordinances and statutes and the doing of hazardous acts when the danger is obvious and a mere failure or refusal to perform a duty required by statute generally constitute mere “negligence” and such negligence, however great, does not constitute “willful misconduct” or “willful failure or refusal to perform a duty required by statute” and will not defeat recovery of compensation by employee or his dependents. Code, § 114–105.—Gooseby v. Pinson Tire Co., 16 S.E.2d 767, 65 Ga.App. 837.—Work Comp 780, 787.

Ga.App. 1941. The mere violation of a statute is generally “negligence,” but if such statute is a penal statute, and its violation is a crime, the transaction loses its character of negligence and becomes “willful misconduct” within the meaning of codal provision denying compensation for injury or death due to employee’s willful misconduct. Code, § 114–105.—Gooseby v. Pinson Tire Co., 16 S.E.2d 767, 65 Ga.App. 837.—Work Comp 780.

Ga.App. 1941. The failure of a motorist while traveling along a highway at night to have provided his automobile with front lamps of character as required by statute is “negligence per se”, and while failure to dim such lights is “negligence” it is not “negligence per se”, as the requirement to dim is by inference and not mandate. Code,

§ 68-302.—*Whatley v. Henry*, 16 S.E.2d 214, 65 Ga.App. 668.—*Autos* 149.

Ga.App. 1940. An act, including an act prohibited by a penal statute, which might be negligence as a matter of law, is not "negligence" unless it is in violation of some duty owing by the actor to another and capable of having a causal connection with the injury.—*Etheridge v. Guest*, 12 S.E.2d 483, 63 Ga.App. 637.—*Neglig* 259, 409.

Ga.App. 1938. Failure of employees unloading log from truck at sawmill, to warn sawyer, who was in position of danger, that log was about to be unloaded, was not "negligence" for which employer was liable, where, at time log was released, employee who released log could not see sawyer and employee who gave signal to unload thought sawyer was in front of truck in position of safety, and fact that sawyer was acquainted with danger attendant on unloading log was known to employee who gave signal for unloading.—*Wisham v. McNeeley*, 199 S.E. 542, 58 Ga.App. 587.—*Mast & S* 304.

Ga.App. 1935. "Negligence," including "gross negligence," and "wilful and wanton misconduct" are not synonymous terms.—*Southern Ry. Co. v. Kelley*, 182 S.E. 631, 52 Ga.App. 137.—*Neglig* 200, 273, 275.

Ga.App. 1934. Petition for injuries to pedestrian alleging "negligence" in operation of one-man street car held sufficient.—*Georgia Power Co. v. Gillespie*, 173 S.E. 755, 48 Ga.App. 688.—*St R R* 110(1).

Ga.App. 1933. "Negligence" is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do.—*Newill v. Atlanta Gas Light Co.*, 172 S.E. 232, 48 Ga.App. 226.

Ga.App. 1933. Words "negligence" and "willfulness" are incompatible, and, absent statutory authorization, plaintiff cannot in single count allege both simple negligence and wilful misconduct.—*Buffington v. Atlanta, Birmingham & Coast R. Co.*, 169 S.E. 756, 47 Ga.App. 85.—*Plead* 64(2).

Hawai'i 1983. In narrow sense, "negligence" is failure to do what reasonable and prudent person would ordinarily have done under given circumstances, as well as doing of what such person would, under such circumstances, not have done.—*Wong v. City and County of Honolulu*, 665 P.2d 157, 66 Haw. 389.—*Neglig* 233.

Hawai'i App. 1981. Rule of law established in *Yoshizaki v. Hilo Hospital* decision, that statute of limitations for medical malpractice actions does not begin to run until plaintiff knew or should have known of defendant's negligence, is the same as the rule under statute limiting time within medical malpractice action may be initiated to six years after date of operation or two years after injured person discovers the injury, whichever occurs sooner; in the context of a medical malpractice suit, the terms "injury," "legal injury," "legal wrong," "malpractice," "cause of action," and "negligence" are synonymous. HRS § 657-7.3.—*Jacoby v. Kaiser Foun-*

dation Hospital, 622 P.2d 613, 1 Haw.App. 519.—*Lim of Act* 95(12).

Idaho 1942. The failure of driver of truck, followed by another truck, to give appropriate signal of his intention to change course or suddenly decrease speed, as required by statute, constituted "negligence" and "misdemeanor". Code 1932, § 48-557 and § 48-517, as amended by Laws 1939, c. 108.—*Madron v. McCoy*, 126 P.2d 566, 63 Idaho 703.—*Autos* 172(6).

Idaho 1927. To constitute "negligence" on carrier's part, jerking or jamming of freight car must have been accomplished with unusual severity.—*Cooper v. Oregon Short Line R. Co.*, 262 P. 873, 45 Idaho 313.—*Carr* 215.

Idaho 1927. "Negligence" on part of physician consists in his doing something which he should not have done, or in omitting to do something which he should have done in treating patient.—*Swanson v. Wasson*, 262 P. 147, 45 Idaho 309.

Idaho 1926. "Negligence" on part of highway district with respect to excavation in highway is failure to perform act or do thing which reasonably prudent person under like circumstances would do or perform.—*Strickfaden v. Green Creek Highway Dist.*, 248 P. 456, 42 Idaho 738, 49 A.L.R. 1057.—*High* 188.

Idaho 1910. *Bouv.Law Dict.* defines "negligence" to be the omission to do something which a reasonable man guided by the considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. Proof that a telegraph company failed to transmit a message correctly is prima facie evidence of its negligence.—*Strong v. Western Union Telegraph Co.*, 109 P. 910, 18 Idaho 389, 30 L.R.A.N.S. 409, *Am. Ann. Cas.* 1912A,55.

Idaho App. 1996. "Negligence" consists of duty which is recognized by law, breach of duty, causal connection between defendant's conduct and resulting injuries, and actual loss or damage.—*Kessler v. Barowsky*, 931 P.2d 634, 129 Idaho 640, affirmed in part, vacated in part 931 P.2d 641, 129 Idaho 647.—*Neglig* 202.

Ill. 1994. Term "negligence" as used in exclusion from comprehensive liability policy endorsement specifying third party as additional insured and extending coverage to additional insured's operations did not encompass claim against third party for violation of Structural Work Act, and policy thus provided coverage for such a claim. S.H.A. 740 ILCS 150/1 et seq.—*National Union Fire Ins. Co. of Pittsburgh, Pennsylvania v. Glenview Park Dist.*, 198 Ill.Dec. 428, 632 N.E.2d 1039, 158 Ill.2d 116.—*Insurance* 2362.

Ill. 1943. Proof of "negligence" consists in showing a duty to person injured, a breach of such duty, and an injury proximately resulting from such breach.—*Neering v. Illinois Cent. R. Co.*, 50 N.E.2d 497, 383 Ill. 366, conformed to 53 N.E.2d 271, 321 Ill.App. 625.—*Neglig* 202.

Ill. 1943. "Negligence" and "willful and wanton misconduct", such as would authorize recovery by automobile guest against motorist host, are not synonymous. S.H.A. ch. 95½, § 58a.—Bartolucci v. Falletti, 46 N.E.2d 980, 382 Ill. 168.—Autos 181(1).

Ill. 1942. A motorman on a street car must exercise great care at street intersections, and a failure to keep a proper lookout for other vehicles constitutes "negligence".—Gnat v. Richardson, 39 N.E.2d 337, 378 Ill. 626.—Urb R R 23.1.

Ill. 1942. The failure of a motorman on a street car to give proper warning before making a left turn at a street intersection may constitute "negligence".—Gnat v. Richardson, 39 N.E.2d 337, 378 Ill. 626.—Urb R R 23.1.

Ill. 1915. An employé, performing dangerous work in obedience to the employer's command, does not assume the risk; but he may be guilty of contributory negligence, depending on whether the danger was so great that a person of ordinary prudence would not have incurred it, for "negligence" consists in conduct which common experience or special knowledge of the actor shows to be so likely to produce the result complained of under the circumstances known to him that he is answerable for that result, though it was not certain, intended or foreseen.—Wheeler v. Chicago & W.I.R. Co., 108 N.E. 330, 267 Ill. 306.

Ill. 1909. An instruction defining "negligence" as the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a prudent and reasonable man would not do, is substantially correct.—Perryman v. Chicago City Ry. Co., 89 N.E. 980, 242 Ill. 269.—Neglig 233.

Ill. 1909. An instruction defining "negligence" held substantially correct.—Perryman v. Chicago City Ry. Co., 89 N.E. 980, 242 Ill. 269.—Neglig 1720.

Ill.App. 1 Dist. 1996. "Negligence," as used in statute providing procedure by which plaintiff may assert claim for punitive damages in actions on account of bodily injury based on negligence, is used in generic sense as term covering all types of nonintentional, nonstrict liability torts, including willful and wanton misconduct. S.H.A. 735 ILCS 5/2-604.1.—Stojkovich v. Monadnock Bldg., 217 Ill. Dec. 35, 666 N.E.2d 704, 281 Ill.App.3d 733, appeal denied 219 Ill.Dec. 577, 671 N.E.2d 744, 168 Ill.2d 626.—Damag 91(1).

Ill.App. 1 Dist. 1980. "Negligence" is defined as failure to do something which a reasonably careful person would do, or doing something which a reasonably careful person would not do.—Vinke v. Artim Transp. System, Inc., 42 Ill.Dec. 403, 408 N.E.2d 1112, 87 Ill.App.3d 400.—Neglig 233.

Ill.App. 1 Dist. 1979. In "negligence" action, plaintiff had burden of establishing four essential elements: duty imposed by law on defendants to exercise care; failure of defendants to perform that duty; injury proximately caused by defendants' failure to perform that duty, and plaintiff's exercise of

ordinary care for his own safety.—Lode v. Mercanio, 32 Ill.Dec. 633, 395 N.E.2d 1014, 77 Ill.App.3d 150.—Neglig 202.

Ill.App. 1 Dist. 1975. "Negligence" is a failure to exercise the standard of care of a reasonably prudent person under circumstances of a case.—Griffin v. Darda, 329 N.E.2d 245, 28 Ill.App.3d 693.—Neglig 233.

Ill.App. 1 Dist. 1975. Essential element of "negligence" is the exposure of another to an unreasonable risk of harm.—Dunlap v. Marshall Field & Co., 327 N.E.2d 16, 27 Ill.App.3d 628.—Neglig 233.

Ill.App. 1 Dist. 1973. If a reasonably careful person would ordinarily foresee that an omission to do a certain act or the commission of an act in a certain manner would probably result in injury, and injury to another flows as a result therefrom, such act of omission or commission constitutes "negligence".—Fugate v. Sears, Roebuck & Co., 299 N.E.2d 108, 12 Ill.App.3d 656.—Neglig 213.

Ill.App. 1 Dist. 1968. "Negligence" consists in failure to exercise standard of care of reasonably prudent person under circumstances of case.—Lukasik v. Hajdas, 244 N.E.2d 404, 104 Ill.App.2d 1.—Neglig 233.

Ill.App. 1 Dist. 1960. "Negligence" is the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do.—Hack v. New York, C. & St. L.R. Co., 169 N.E.2d 372, 27 Ill.App.2d 206.—Neglig 233.

Ill.App. 1 Dist. 1958. "Negligence" is breach of duty which one person owes to another, or absence of care, according to circumstances, and it may be defined as a want of that degree of care which law requires in a given case.—Hartman v. Goldblatt Bros., Inc., 154 N.E.2d 872, 19 Ill.App.2d 563.—Neglig 230, 250.

Ill.App. 1 Dist. 1945. "Negligence" is not only the doing of something which a prudent and reasonable man would not do but it is also the omission to do something, which a prudent and reasonable man guided by those considerations which ordinarily regulate human affairs, would do.—Loverde v. Consumers Petroleum Co., 63 N.E.2d 673, 327 Ill.App. 210.—Neglig 233.

Ill.App. 1 Dist. 1945. The terms "negligence" and "wilful and wanton misconduct" are not synonymous.—Nelson v. Armistead, 63 N.E.2d 648, 327 Ill.App. 184.—Neglig 200, 275.

Ill.App. 1 Dist. 1943. Violation of statute forbidding sale of unwholesome or adulterated milk or cream, or milk or cream not well cooled or handled in unclean or unsanitary containers, is not in and of itself "negligence," but merely evidence of negligence, and hence instruction which in effect stated that violation of statute was negligence was erroneous. S.H.A. ch. 56½, § 16.—Welter v. Bowman Dairy Co., 47 N.E.2d 739, 318 Ill.App. 305.—Food 25.

Ill.App. 1 Dist. 1943. The elements of a cause of action for "negligence" are negligent conduct with respect to an interest of another that is protected against unintentional invasion, which conduct is a legal cause of invasion of such interest or any other similar interest thus protected, and freedom of the other from any conduct that would disable him from bringing an action for such invasion.—*Edwards v. Ely*, 47 N.E.2d 344, 317 Ill.App. 599.

Ill.App. 1 Dist. 1942. "Negligence" is a breach of duty, and, where there is no duty or breach thereof, there can be no negligence.—*Rokicki v. Polish Nat. Alliance of U.S. of North America*, 41 N.E.2d 300, 314 Ill.App. 380.

Ill.App. 1 Dist. 1941. The word "negligence" in provision in Workmen's Occupational Diseases Act giving employee a right of action for injury to health sustained in course of employment and proximately caused by employer's negligence, did not mean general or ordinary negligence, in view of proviso that employer's violation of statute intended for employee's health or violation of Industrial Commission's rules pursuant to Health and Safety Act should constitute negligence within meaning of provision. *Smith-Hurd Stats. c. 48, §§ 137.1, 137.3-137.5, 172.3.*—*Grutzius v. Armour & Co. of Delaware*, 38 N.E.2d 773, 312 Ill.App. 366.—*Emp Liab 16*.

Ill.App. 1 Dist. 1941. The word "provided" in section in Workmen's Occupational Diseases Act giving employee a right of action for injury to health sustained in course of employment and proximately caused by employer's negligence, provided that employer's violation of statute intended for employee's health or violation of Industrial Commission's rules pursuant to Health and Safety Act should constitute negligence within meaning of section, was used in its ordinary sense, and did not mean "and" or "also" and intention of Legislature was to qualify word "negligence" in first part of section to mean negligence as defined in the proviso. *Smith-Hurd Stats. c. 48, §§ 137.1, 137.3-137.5, 172.3.*—*Grutzius v. Armour & Co. of Delaware*, 38 N.E.2d 773, 312 Ill.App. 366.—*Emp Liab 16*.

Ill.App. 1 Dist. 1941. Where there is a particularly intention to injure, or a degree of willful or wanton recklessness which authorizes a presumption of an intention to injure generally, the act ceases to be merely "negligence" and becomes "willful" or "wanton."—*Kelly v. Burtner*, 33 N.E.2d 754, 310 Ill.App. 251.—*Neglig 275*.

Ill.App. 1 Dist. 1940. It is the duty of persons about to cross a dangerous place to approach it with care commensurate with the known danger, and when one on a public highway fails to use ordinary precaution while proceeding over a dangerous place, such conduct is condemned as "negligence."—*Russell v. Richardson*, 31 N.E.2d 427, 308 Ill.App. 11.—*High 175*.

Ill.App. 1 Dist. 1939. Where pedestrian stepped off sidewalk to parkway some six inches lower and fell, maintenance of parkway on lower level was not "negligence."—*McKinley v. City of Chicago*, 19 N.E.2d 452, 299 Ill.App. 58.—*Mun Corp 766*.

Ill.App. 2 Dist. 1968. Essential element of "negligence" is the exposure of another to an unreasonable risk of harm, and therein lies the distinction between an insurer, who is responsible for all enumerated risks, and a negligent person, who is responsible only for those risks unreasonably imposed upon another.—*Beccue v. Rockford Park Dist.*, 236 N.E.2d 105, 94 Ill.App.2d 179.—*Neglig 200*.

Ill.App. 2 Dist. 1952. "Negligence" is a wrong which constitutes a ground of legal liability and one who suffers injury through the act of another in which the requisite elements of negligence and proximate cause are present has a cause of action against such other person.—*Dargie v. East End Bolders Club*, 105 N.E.2d 537, 346 Ill.App. 480.—*Neglig 202*.

Ill.App. 2 Dist. 1951. "Negligence" and "willful and wanton misconduct", such as would authorize recovery by administrator of estate of boy who was killed when motor scooter he was riding was struck at intersection by defendant's automobile, are not synonymous.—*Countryman v. Sullivan*, 100 N.E.2d 799, 344 Ill.App. 371.—*Autos 158, 162(1)*.

Ill.App. 2 Dist. 1942. There is a fundamental difference between "negligence" and "willful and wanton conduct" in that the defenses to the two charges may not be the same, the law governing liability is not the same, and damages are not governed by the same rules of law.—*Grice v. O'Neill*, 43 N.E.2d 565, 315 Ill.App. 673.—*Neglig 275*.

Ill.App. 2 Dist. 1936. In action for death of boy approximately five years of age who was struck by defendant's automobile on clear day and on dry, level, and straight paved highway, question of defendant's liability for "negligence" held for jury.—*Bailey v. Kyle*, 3 N.E.2d 173, 285 Ill.App. 599.—*Autos 245(8)*.

Ill.App. 2 Dist. 1936. In action for death of boy approximately five years of age who was struck by defendant's automobile on clear day and on dry, level, and straight paved highway, question of defendant's liability for "negligence" held for jury, so that granting of new trial after second trial and second verdict for defendant was error.—*Bailey v. Kyle*, 3 N.E.2d 173, 285 Ill.App. 599.—*New Tr 78(1)*.

Ill.App. 3 Dist. 1955. "Negligence" is a breach of duty, and where there is no duty or breach there can be no negligence.—*Walters v. Christy*, 124 N.E.2d 658, 5 Ill.App.2d 68.—*Neglig 250*.

Ill.App. 3 Dist. 1936. Persons about to cross railroad track must look about them and see if there is danger and not go recklessly on track, and when traveler on public highway fails to use ordinary precaution in driving over railroad crossing, such conduct is condemned as "negligence."—*Grubb v. Illinois Terminal Co.*, 3 N.E.2d 948, 286 Ill.App. 499, reversed 8 N.E.2d 934, 366 Ill. 330.—*R R 327(1)*.

Ill.App. 4 Dist. 1942. If a reasonably prudent person might and ordinarily would foresee that the omission to do a certain act or the commission of

an act in a certain way would result in injury to another and injury to another does follow as a result thereof, such act of omission or commission is "negligence" and the "proximate cause" of the injury.—*Freeman v. Leader Mercantile Co.*, 40 N.E.2d 548, 313 Ill.App. 652.—*Neglig* 213, 387.

Ill.App. 4 Dist. 1939. Failure of train to ring bell or blow whistle before entering upon public crossing, as required by statute would be nothing more than "negligence" and would not constitute "willful and wanton conduct."—*Miles v. American Steel Foundries*, 23 N.E.2d 754, 302 Ill.App. 262.—*R R* 339(1).

Ind. 1999. To establish a claim of "negligence," a plaintiff must show: (1) that the defendant owed the plaintiff a duty, (2) that the defendant breached that duty, and (3) that the breach proximately caused the plaintiff's injury.—*Delta Tau Delta, Beta Alpha Chapter v. Johnson*, 712 N.E.2d 968.—*Neglig* 202.

Ind. 1974. Tort of "negligence" is comprised of three elements: (1) a duty on the part of defendant in relation to the plaintiff, (2) failure on the part of defendant to conform its conduct to the requisite standard of care required by the relationship, and (3) an injury to the plaintiff resulting from that failure.—*Miller v. Griesel*, 308 N.E.2d 701, 261 Ind. 604.—*Neglig* 202.

Ind. 1944. "Negligence" is a failure to exercise that degree of care which a person of ordinary prudence would exercise under like circumstances and is to be measured in light of some danger that is reasonably to be anticipated.—*Southern Ry. Co. v. Harpe*, 58 N.E.2d 346, 223 Ind. 124.—*Neglig* 232.

Ind. 1942. The test of "contributory negligence", like that of "negligence", is whether ordinary care was exercised under the circumstances.—*Hedgecock v. Orlosky*, 44 N.E.2d 93, 220 Ind. 390.—*Neglig* 502(2).

Ind. 1942. "Negligence" may be in acts committed or omitted, but there is no distinction between "active" and "passive" negligence.—*Indiana Harbor Belt R. Co. v. Jones*, 41 N.E.2d 361, 220 Ind. 139.—*Neglig* 200.

Ind. 1942. If the probable presence of children on the premises raises a duty of ordinary care, such duty may be violated before the children arrive upon the premises by leaving things undone which ought to have been done in anticipation of their coming, and such violation of duty constitutes "negligence", even though it be classified as "passive negligence".—*Indiana Harbor Belt R. Co. v. Jones*, 41 N.E.2d 361, 220 Ind. 139.—*Neglig* 1066.

Ind. 1942. The duty of care arising from probable presence of children on the premises is relative rather than absolute, and in determining "negligence" regard must be had to the character and location of the premises, the purpose for which they are used, the probability of injury therefrom, the precautions necessary to prevent such injury, and the relations such precautions bear to the beneficial use of the premises.—*Indiana Harbor Belt R. Co.*

v. Jones, 41 N.E.2d 361, 220 Ind. 139.—*Neglig* 1016, 1066.

Ind. 1941. Though degree of care required is always the care which an ordinarily prudent person would exercise under the same or similar circumstances, a material change in circumstances might cause ordinarily prudent person to act differently, and hence actions or omissions to act which would constitute negligence under one set of circumstances might, under different combination of circumstances, constitute the action of a reasonably prudent person, and therefore not amount to "negligence".—*Jones v. Cary*, 37 N.E.2d 944, 219 Ind. 268.—*Neglig* 233.

Ind. 1941. "Negligence" is conduct which creates an undue risk of harm to others, and "contributory negligence" is conduct which involves an undue risk of harm to the person who sustains it, and in the one case the reasonable man, whose conduct furnishes the standard to which all normal adults must conform, is a person who pays reasonable regard to the safety of others, and in the other the reasonable man is a reasonably prudent man, who as such pays reasonable regard to his own safety.—*Cushman Motor Delivery Co. v. McCabe*, 36 N.E.2d 769, 219 Ind. 156.—*Neglig* 233, 502(2).

Ind. 1941. Though it is "negligence" to fail to see or hear what one can see or hear by exercise of ordinary and reasonable care, and hence the same legal consequences attach for not seeing or hearing as if in fact one did see and hear, negligence must be proven and cannot be inferred in absence of some proof.—*Pfisterer v. Key*, 33 N.E.2d 330, 218 Ind. 521.—*Neglig* 233, 506(6), 1578, 1602.

Ind. 1940. It is "negligence" on the part of any one, whether stranger, invitor, or employer, with knowledge of what is to be done, to maintain a place which is not reasonably safe, in view of activities and operations therein mutually contemplated.—*Rush v. Hunziker*, 24 N.E.2d 931, 216 Ind. 529.—*Neglig* 1033.

Ind. 1938. To constitute actionable "negligence" there must exist duty or obligation which defendant is under to protect plaintiff from injury, failure to discharge that duty, and injury resulting therefrom.—*Bain v. Mattmiller*, 13 N.E.2d 712, 213 Ind. 549.—*Neglig* 202.

Ind. 1935. Embezzlement statute covering officers or agents receiving deposit when bank was insolvent held to contemplate proof of fraudulent intent, and evidence showing only that defendant officer could have known of insolvency by exercising ordinary care is insufficient to show intent as matter of law; "fraud" being distinguishable from "mistake" or "negligence".—*Burns' Ann.St.* § 10-1714.—*Walter v. State*, 195 N.E. 268, 208 Ind. 231, 98 A.L.R. 607.—*Banks* 85(2).

Ind. 1934. "Negligence" is based on neglect of duty.—*Terre Haute, Indianapolis & Eastern Traction Co. v. Auler*, 188 N.E. 572, 206 Ind. 423.—*Neglig* 250.

Ind. 1917. Answers to special interrogatories whether defendant's employes willfully killed de-

ceased, "Yes, by negligence," nullify themselves; "negligence" arising from heedlessness, and "willfulness" requiring purpose or design, and negligence of whatever degree not amounting to willfulness.—*Ft. Wayne & Wabash Valley Traction Co. v. Justus*, 115 N.E. 585, 186 Ind. 464.

Ind. 1917. "Negligence" is failure to use due or ordinary care measured by care a reasonably prudent person would exercise under like conditions.—*City of Decatur v. Eady*, 115 N.E. 577, 186 Ind. 205, L.R.A. 1917E,242.—*Neglig* 233.

Ind. 1916. Pleading negligence in general terms, as that a defendant railroad receiver carelessly and negligently caused a railway coach to be suddenly and violently started over and along the line of its railway at a certain place without warning to plaintiff's decedent is sufficient on demurrer, since, if defendant desires a more definite statement of the acts or conduct relied on as negligence, he may move for an order requiring the complaint to be made more specific, for "negligence" is a failure to use ordinary care under the circumstances, and an allegation that an act was "negligently done" amounts to saying that ordinary care required that it should not have been done at all, or that it should have been done in some other way, and that the doing of the act was not consistent with the exercise of ordinary care under the circumstances.—*Curtis v. Mauger*, 114 N.E. 408, 186 Ind. 118.

Ind. 1914. An instruction in an action for the death of an employee defining "negligence," held correct.—*Shirley Hill Coal Co. v. Moore*, 103 N.E. 802, 181 Ind. 513.—*Emp Liab* 269.1.

Ind. 1911. An instruction in a servant's action for personal injuries that the doing of an act by the plaintiff which materially contributed to his injury would not constitute contributory negligence, unless the jury found "that he was in fault in doing such act," was not erroneous; the word "fault" being synonymous with "negligence," as used therein (citing 3 Words and Phrases, pp. 2703, 2704).—*Indiana Union Traction Co. v. Long*, 96 N.E. 604, 176 Ind. 532.—*Emp Liab* 276.

Ind. 1902. The terms "negligence" and "willfulness" are incompatible. Negligence arises from inattention, thoughtlessness, or heedlessness, while willfulness cannot exist without purpose or design. No purpose or design can be said to exist where the injurious act results from negligence, and negligence cannot be of such degree as to become willfulness.—*Brooks v. Pittsburgh, C., C. & St. L.R. Co.*, 62 N.E. 694, 158 Ind. 62.

Ind.App. 3 Dist. 1986. Negligence and willfulness are incompatible terms as "negligence" arises from inattention, thoughtlessness, or heedlessness, while "willfulness" cannot exist without purpose or design; negligence can never be of such degree as to become willfulness.—*Koop v. Bailey*, 502 N.E.2d 116.—*Neglig* 275.

Ind.App. 1 Dist. 1978. The tort of "negligence" consists of three elements: a duty owed by defendant to plaintiff, failure of defendant to conform his conduct to requisite standard of care dictated by

relationship, and injury caused plaintiff as result of that failure.—*Orth v. Smedley*, 378 N.E.2d 20, 177 Ind.App. 90.—*Neglig* 202.

Ind.App. 2 Dist. 1976. "Negligence" as a general rule only encompasses that conduct which falls below standard to which an ordinary and reasonable person in like or similar circumstances would conform for his own protection and which contributes as a legal cause of harm.—*DeMichaeli and Associates v. Sanders*, 340 N.E.2d 796, 167 Ind. App. 669.—*Neglig* 233.

Ind.App. 1 Dist. 1974. "Negligence" is failure to do what a reasonably careful and prudent person would have done under the same or like circumstances, or the doing of something which a reasonably careful and prudent person would not have done under the same or like circumstances; in other words, negligence is failure to exercise reasonable and ordinary care.—*LaNoux v. Hagar*, 308 N.E.2d 873, 159 Ind.App. 646.—*Neglig* 233.

Ind.App. 2 Div. 1966. The three essential elements of actionable "negligence" are duty by defendant to protect plaintiff from the injury complained of, failure to perform that duty, and injury from that failure.—*Thompson v. Owen*, 218 N.E.2d 351, 141 Ind.App. 190.—*Neglig* 202.

Ind.App. 2 Div. 1965. Voluntary conduct of one exposing himself to dangers which are so obvious, imminent and glaring that no reasonable man exercising due care for his safety would have hazarded them is "negligence" as matter of law.—*Stallings v. Dick*, 210 N.E.2d 82, 139 Ind.App. 118.—*Neglig* 506(7).

Ind.App. 1 Div. 1961. "Negligence" under Federal Employers' Liability Act includes all meanings given to it by court and comprehends any negligence of employer causing or proximately contributing to injury, whether antecedent or subsequent to negligence of employee. Federal Employers' Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.—*Davis v. Louisville & N. R. Co.*, 173 N.E.2d 749, 132 Ind.App. 419, certiorari denied 82 S.Ct. 828, 369 U.S. 820, 7 L.Ed.2d 786.—*Emp Liab* 11.

Ind.App. 1942. Where railings or barriers are necessary for safety of travelers, municipality's failure to construct and maintain them is "negligence".—*Town of Remington v. Hesler*, 41 N.E.2d 657, 111 Ind.App. 404.—*Mun Corp* 796.

Ind.App. 1942. A person who is so absolutely devoid of intelligence as to be unable to apprehend apparent danger and to avoid exposure to it cannot be said to be guilty of "negligence".—*Riesbeck Drug Co. v. Wray*, 39 N.E.2d 776, 111 Ind.App. 467.—*Neglig* 535(13).

Ind.App. 1941. To operate an automobile in violation of a statute is "negligence", and such negligence is actionable if it proximately results in injuries to life or property.—*Buddenberg v. Morgan*, 38 N.E.2d 287, 110 Ind.App. 609.—*Autos* 147, 201(1.1).

Ind.App. 1941. Intoxication alone does not constitute actionable "negligence", but when intoxi-

cation of a driver coupled with the operation of a motor vehicle is established, wrongful conduct is shown. *Laws* 1927, c. 191. *Burns' Ann.St.* § 45-517.—*Buddenberg v. Morgan*, 38 N.E.2d 287, 110 Ind.App. 609.—*Autos* 157.

Ind.App. 1941. "Negligence" consists in the failure to use due care, or ordinary care, which is measured by the care a person of reasonable prudence would ordinarily exercise under like conditions.—*Tabor v. Continental Baking Co.*, 38 N.E.2d 257, 110 Ind.App. 633.—*Neglig* 232.

Ind.App. 1941. Receivers of railroad had duty to refrain from creation or maintenance of any condition upon railroad right of way which subjected traveling public using highways in vicinity of such right of way to unreasonable risks or conditions that were unnecessarily dangerous and violation of such duty would constitute "negligence".—*Pitcairn v. Whiteside*, 34 N.E.2d 943, 109 Ind.App. 693.—*R R* 113(3).

Ind.App. 1941. Three elements are essential to existence of actionable "negligence", namely, the existence of duty of defendant to protect plaintiff from the injury of which he complains, failure by defendant to perform that duty, and injury to plaintiff from such failure.—*Pontiac-Chicago Motor Exp. Co. v. George Cassons & Son*, 34 N.E.2d 171, 109 Ind.App. 248.—*Neglig* 202.

Ind.App. 1941. "Negligence" is the failure to use reasonable care.—*Tucker Freight Lines v. Gross*, 33 N.E.2d 353, 109 Ind.App. 454.—*Neglig* 233.

Ind.App. 1938. "Willful" misconduct means something different from and more than "negligence," however great, and it involves conduct of quasi criminal nature, the intentional doing of something, whether with knowledge that it is likely to result in serious injury or with wanton and reckless disregard of its probable consequences.—*Kahan v. Weeksler*, 12 N.E.2d 998, 104 Ind.App. 673.

Ind.App. 1932. Statute relieves automobile owner or operator from liability for injuries to guest in accident caused by negligence as defined by pre-existing law, under which failure to observe ordinary care constituted "negligence". *Burns' Ann.St. Supp.* 1929, §§ 10142.1, 10142.2 (See *Burns' Ann.St.* § 47-1801 et seq.)—*Coconower v. Stoddard*, 182 N.E. 466, 96 Ind.App. 287.—*Autos* 181(1).

Ind.App. 2 Div. 1919. "Negligence" which renders one liable to another who is injured thereby is the doing of some act or thing which it is his duty to refrain from doing, or in failing to do some act or thing which it is his duty to do.—*Louisville & Southern Indiana Traction Co. v. Jennings*, 123 N.E. 835, 73 Ind.App. 69.—*Neglig* 250.

Ind.App. 2 Div. 1911. "Willfulness" and "negligence" are diametrically opposed; negligence importing inattention, inadvertence, and indifference, while willfulness imports intention, purpose, and design; and there being no negligence with, and no willfulness without, intent.—*Barrett v. Cleveland*,

C., C. & St. L. Ry. Co., 96 N.E. 490, 48 Ind.App. 668.—*Neglig* 201, 275.

Ind.App. 2 Div. 1909. Every action of "negligence" depends upon a duty owing by defendant to protect plaintiff, failure to perform such duty, and a resulting injury to plaintiff.—*City of Laporte v. Osborn*, 86 N.E. 995, 43 Ind.App. 100.

Ind.App. 1906. Purpose or design is foreign to "negligence".—*Pittsburgh, C., C. & St. L. Ry. Co. v. Ferrell*, 78 N.E. 988, 39 Ind.App. 515, rehearing denied 80 N.E. 425, 39 Ind.App. 515.

Ind.App. 2 Div. 1906. "Negligence" consists in the doing or omitting to do some act which a person in the exercise of ordinary care and prudence would not do or omit to do, and which act, if done or omitted by him, contributed and helped to produce the injury complained of.—*Evansville & T. H. R. Co. v. Mills*, 77 N.E. 608, 37 Ind.App. 598.

Ind.App. 2 Div. 1905. "Negligence" is the breach of some duty which a person owes to another, and where, by such breach of duty, injury is caused as a proximate result thereof, then such negligence is actionable, and the injured person may recover damages therefor, provided he himself did not contribute thereto materially by negligence on his part.—*Indianapolis & M. Rapid Transit Co. v. Edwards*, 74 N.E. 533, 36 Ind.App. 202.

Ind.App. 1904. "Care" and "carefulness" are antonyms of "neglect" and "negligence" and are conclusions.—*Avery v. Nordyke & Marmon Co.*, 70 N.E. 888, 34 Ind.App. 541, dismissed 73 N.E. 119, 164 Ind. 186.—*Trial* 355(3).

Ind.App. 1891. The word "negligence" implies in itself that there is not necessarily ignorance by the one who is guilty of it.—*Alexandria Mining & Exploring Co. v. Painter*, 28 N.E. 113, 1 Ind.App. 587.

Iowa 1995. "Negligence" is a common-law tort which is defined as conduct that falls below the standard established by law for the protection of others against unreasonable risk of harm.—*Marcus v. Young*, 538 N.W.2d 285, rehearing denied.—*Neglig* 233.

Iowa 1992. "Negligence" is conduct that falls below standard established by law for protection of others against unreasonable risk of harm.—*Knake v. King*, 492 N.W.2d 416.—*Neglig* 233.

Iowa 1992. "Negligence" is breach of legal duty or obligation.—*Peters v. Burlington Northern R. Co.*, 492 N.W.2d 399.—*Neglig* 250.

Iowa 1982. "Negligence" is generally defined as conduct that falls below standard law establishes for protection of others against unreasonable risk of harm.—*Seeman v. Liberty Mut. Ins. Co.*, 322 N.W.2d 35.—*Neglig* 233.

Iowa 1977. "Negligence" is the breach of legal duty or obligation recognized by the law, requiring the actor to conform to a certain standard of risk, for the protection of others against unreasonable risks.—*Lewis v. State*, 256 N.W.2d 181, 95 A.L.R.3d 1221.—*Neglig* 202.

Iowa 1969. "Negligence" is conduct which creates undue risk of harm to another.—*Adams v. Deur*, 173 N.W.2d 100.—Neglig 231.

Iowa 1964. Failure of plaintiff to avoid dismissal of case for want of prosecution under Civil Procedure Rule constituted "negligence" within limitations statute permitting avoidance of bar of limitations by commencement of a second action within six months after termination of first for any cause except negligence. 58 I.C.A. Rules of Civil Procedure, rule 215.1; I.C.A. § 614.10.—*Central Const. Co. v. Klingensmith*, 127 N.W.2d 654, 256 Iowa 364.—*Lim of Act* 130(5).

Iowa 1963. "Negligence" is want of ordinary care under circumstances.—*Christianson v. Kramer*, 122 N.W.2d 283, 255 Iowa 239.—Neglig 232.

Iowa 1957. "Negligence" is failure to exercise care of ordinary prudent person under circumstances.—*John Roof & Sons, Inc. v. Winterbottom*, 86 N.W.2d 131, 249 Iowa 122.—Neglig 232.

Iowa 1957. "Negligence" is a broad term but in general consists in doing something which the ordinarily prudent person would not have done, or in failing to do something which such person would have done.—*McGrath Bldg. Co. v. City of Bettendorf*, 85 N.W.2d 616, 248 Iowa 1386, 68 A.L.R.2d 1429.—Neglig 232.

Iowa 1956. "Negligence" is a want of ordinary care under the circumstances and "ordinary care" means such care as an ordinarily prudent person would exercise.—*Nesci v. Willey*, 75 N.W.2d 257, 247 Iowa 621.—Neglig 232.

Iowa 1955. "Negligence" is conduct which creates an undue risk of harm to others, whereas "contributory negligence" is conduct which involves an undue risk of harm to the person who sustains such harm.—*Brewer v. Johnson*, 72 N.W.2d 556, 247 Iowa 483.—Neglig 231, 502(2).

Iowa 1949. An act or omission constitutes "negligence" if the person charged should have foreseen his act or omission would probably result in injury of some kind to some person, though the particular injury that resulted was not foreseen.—*McGrean v. Bos Freight Lines*, 36 N.W.2d 374, 240 Iowa 318.—Neglig 213.

Iowa 1946. To constitute "negligence" the person charged should have foreseen that his act or omission would probably result in injury of some kind to some person, and he need not have foreseen the particular injury that resulted.—*Kaffenberger v. Holle*, 22 N.W.2d 804, 237 Iowa 542.—Neglig 213.

Iowa 1945. Though greater care and watchfulness and more expert operation of automobile is required through snow, ice, slush, and mud than when highways are dry, a motorist driving under such conditions is not "reckless" within guest statute, nor is he "reckless" if automobile slips or swerves or skids because he misjudges condition of road at some place or because he, by intention or advertence, applies brakes to forcibly or abruptly or feeds gas somewhat too freely, though such errors

may be "negligence". Code 1939, § 5037.10.—*Olson v. Hodges*, 19 N.W.2d 676, 236 Iowa 612.—*Autos* 181(7).

Iowa 1944. "Recklessness" is more than "negligence" and implies no care coupled with disregard for consequences, and conduct which is more than negligent may be reckless without being willful or wanton.—*Skalla v. Daeges*, 15 N.W.2d 638, 234 Iowa 1260.—Neglig 274.

Iowa 1944. "Recklessness," as respects recovery for a guest's injuries, is something more than "negligence" and proof of negligence alone will not authorize a recovery under automobile guest statute. Code 1939, § 5037.10.—*Thunte v. Hart Motors*, 15 N.W.2d 622, 234 Iowa 1294.—*Autos* 181(1).

Iowa 1942. "Negligence" is a type of liability forming conduct, and a "private nuisance" is a "tort", and is a substantial and unreasonable interference with the interest of a private person in the use and enjoyment of his land, and is a type of harm.—*Ryan v. City of Emmetsburg*, 4 N.W.2d 435, 232 Iowa 600.—Neglig 200; Nuis 1.

Iowa 1941. The mere happening of an accident does not of itself afford any evidence of "negligence".—*McMahon v. Rauch*, 298 N.W. 908, 230 Iowa 674.—Neglig 1579.

Iowa 1941. If a harmful consequence was not "reasonably foreseeable", that is, was an improbable consequence, one which could not reasonably have been anticipated, there is not "negligence".—*Kapphahn v. Martin Hotel Co.*, 298 N.W. 901, 230 Iowa 739.—Neglig 213.

Iowa 1940. The failure of compliance with a statutory standard of care is "negligence".—*Smith v. Chicago, B. & Q.R. Co.*, 291 N.W. 417, 227 Iowa 1404.—Neglig 259.

Iowa 1938. The true test to be submitted by instruction defining "negligence" in personal injury suit is whether defendant exercised degree of care which person of ordinary care and prudence would have exercised under same or similar circumstances.—*Schalk v. Smith*, 277 N.W. 303, 224 Iowa 904.—Neglig 232.

Iowa 1937. "Negligence" is want of "ordinary" care under the circumstances; "ordinary care" being such care as an ordinarily prudent person would exercise.—*Mescher v. Brogan*, 272 N.W. 645, 223 Iowa 573.—Neglig 232.

Iowa 1936. Instruction defining "contributory negligence" as negligence helping to produce injury held not erroneous, in view of instruction defining "negligence" as act or omission which ordinarily cautious and prudent man would not have done or omitted.—*Swan v. Dailey-Luce Auto Co.*, 265 N.W. 143, 221 Iowa 842.—*Trial* 296(4).

Iowa 1935. Cause of action for "negligence" involves three essential elements: Existence of duty owing by defendant to protect plaintiff from injury; failure by defendant to perform that duty; and injury proximately resulting to plaintiff from such failure.—*Westenburg v. Johnson*, 264 N.W. 18, 221 Iowa 134.—Neglig 202.

Iowa 1935. "Reckless," within statute limiting liability for injuries to automobile guest, means more than "negligence" in proceeding without heed of or concern for consequences manifesting heedless disregard or indifference to rights of others, the word "recklessness" implying no care, coupled with disregard for consequences. Code 1931, § 5026-b1 (I.C.A. § 321.494).—Hansen v. Dall, 263 N.W. 530, 220 Iowa 817.—Autos 181(1).

Iowa 1935. "Negligence" is lack of ordinary care.—Fortman v. McBride, 263 N.W. 345, 220 Iowa 1003.—Neglig 232.

Iowa 1934. Instruction, in case involving automobile collision outside of cities and towns, that failure to give half of traveled part of highway by turning to right when meeting another vehicle is negligence unless driver has legal excuse, held prejudicial error, since such failure is only prima facie evidence of negligence. There is an essential difference between "negligence" and "prima facie evidence of negligence," since "prima facie evidence of negligence" does not become "negligence" because it is unexplained or because the "negligence" of which it is evidence is not justified.—Lang v. Siddall, 254 N.W. 783, 218 Iowa 263.

Iowa 1933. "Recklessness" is more than "negligence" and less than "wantonness," since "recklessness" is no care, coupled with disregard of consequences, and may or may not be willful or wanton.—Sanburn v. Rollins Hosiery Mills, 251 N.W. 144, 217 Iowa 218.—Neglig 274.

Iowa 1933. Plaintiff suing under statute for guest's injuries has burden of proving "reckless operation" of automobile, which is more than mere "negligence". Code 1931, § 5026-b1 (I.C.A. § 321.494).—Shenkle v. Mains, 247 N.W. 635, 216 Iowa 1324.—Autos 242(1).

Iowa 1932. "Negligence" at common law is doing or not doing something which ordinarily careful and prudent person under same circumstances would do or not do.—Buchanan v. Hurd Creamery Co., 246 N.W. 41, 215 Iowa 415.—Neglig 232.

Iowa 1932. Evidence of automobile tracks leading from hole in dry road to where automobile stopped in ditch, and regarding flat tire and bent fender held insufficient to raise jury question on issue of host's recklessness as regards liability for guest's injuries. I.C.A. § 321.494. Term "reckless" in operation of automobile implies no care, with disregard for consequences, and proceeding without heed or concern for consequences; "recklessness" being a stronger term than "negligence".—Phillips v. Briggs, 245 N.W. 720, 215 Iowa 461.

Iowa 1932. "Negligence" is doing something which ordinarily careful person would not do, or failure to do something which ordinarily careful person would do.—Butters v. Chicago, M., St. P. & P.R. Co., 243 N.W. 597, 214 Iowa 700.—Neglig 232.

Iowa 1931. "Negligence" means failure to exercise "ordinary care," which is care which ordinarily careful and prudent person would exercise under same circumstances.—Neessen v. Armstrong, 239 N.W. 56, 213 Iowa 378.

Iowa 1930. "Negligence" is doing or failing to do something which ordinarily prudent person would not or would do under same circumstances.—Leete v. Hays, 233 N.W. 481, 211 Iowa 379.

Iowa 1930. Where electric company, with consent of brick company, had placed transformer on top of brick company's water tank, and thereafter minor, seeing sparrow nest in bricks of water tank, climbed overflow pipe, coming in contact with electric wires, in action for minor's death, directed verdict for electric company held proper, there being no evidence of negligence on its part; "negligence" being the doing of something which ordinarily careful prudent person under same circumstances would not do or failure to do something which an ordinarily prudent person under same circumstances would do.—Cox v. Des Moines Elec. Light Co., 229 N.W. 244, 209 Iowa 931.

Iowa 1928. Criterion by which to determine whether there is "negligence" is as to whether or not the person exercised same care, prudence, and caution which an ordinarily careful and prudent man would have exercised under the same circumstances.—Graves v. Chicago, R.I. & P. Ry. Co., 222 N.W. 344, 207 Iowa 30.

Iowa 1927. One digging post hole is not insurer as to one falling therein, but is responsible for "negligence".—McKee v. Iowa Ry. & Light Co., 214 N.W. 564, 204 Iowa 44.—Neglig 1140.

Iowa 1927. Failure properly to guard dangerous place constitutes "negligence," ordinarily presenting jury question.—McKee v. Iowa Ry. & Light Co., 214 N.W. 564, 204 Iowa 44.—Neglig 1693.

Iowa 1927. "Negligence" is failure to exercise reasonable care under circumstances.—Crowley v. Chicago, B. & Q.R. Co., 213 N.W. 403, 204 Iowa 1385, 53 A.L.R. 964.—Neglig 233.

Iowa 1927. "Negligence" is omission or inadequate performance of duty.—Newton Auto Salvage Co. v. Herrick, 212 N.W. 680, 203 Iowa 424.—Neglig 250.

Iowa 1926. Contract of seller of hog vaccine guaranteeing manufacture according to government regulations held not invalid, as contract against liability for "negligence".—Howard v. United Serum Co., 211 N.W. 419, 202 Iowa 822.—Contracts 114.

Iowa 1926. Essential elements of "negligence," stated.—Williams v. Cohn, 206 N.W. 823, 201 Iowa 1121.—Neglig 202.

Iowa 1926. "Negligence" predicated on duty.—Williams v. Cohn, 206 N.W. 823, 201 Iowa 1121.—Neglig 210.

Iowa 1922. "Negligence" is the failure to do what an ordinarily reasonable, careful, and prudent person would do under the same or similar circumstances.—Johnson v. Omaha & Council Bluffs St. Ry. Co., 190 N.W. 977, 194 Iowa 1230.

Iowa 1916. "Negligence" is the doing of an act which a reasonably prudent man would not do

under like circumstances, and in relation to the same matter, or the omission to do some act which a reasonably prudent man would not omit to do under like circumstances, and in relation to the same matter.—*Fisher v. Cedar Rapids & M.C. Ry. Co.*, 157 N.W. 860, 177 Iowa 406.

Iowa 1914. In an employé's action for injuries, instructions that plaintiff must prove, by the weight of the evidence, that he was not at fault or negligent, that "negligence" was the omission to do something which a reasonably prudent person, guided by those considerations ordinarily regulating the conduct of human affairs, would do, or the doing of something which a reasonably prudent person would not do, that reasonable and ordinary care and diligence was such care and diligence as an ordinarily prudent person would exercise under similar circumstances, that, if plaintiff exercised ordinary care, considering all the facts and circumstances, then he was not at fault or negligent, but that, if he did not exercise such care and was negligent in any way, no matter how slight, and if, by reason thereof, any injury resulted, he was negligent and could not recover, that, if the injury resulted from an accident, he could not recover, that defendant was not an insurer of the safety of its employés, and was liable only for injuries incurred without fault on the part of the person injured, and because of negligence on its part, that, if the weight of the evidence showed that defendant failed to exercise reasonable care, that because of such failure plaintiff was injured, and that he was free from contributory negligence, he was entitled to recover, and that, in determining whether he was negligent, it was proper to consider all facts and circumstances in reference to the place of the injury and its surroundings, were correct and not conflicting.—*Bird v. Hart-Parr Co.*, 146 N.W. 74, 165 Iowa 542.

Iowa 1912. While the term "negligence" is popularly used to mean an act or omission which is wrongful under the circumstances, as resulting from the failure to exercise the proper care for the protection of others, without regard to resulting injury to any particular person, the legal conception of "actionable negligence," for which recovery may be had, is such an omission to use the degree of care for the protection of another from injury as should have been used under the circumstances and which in a natural and continuous sequence causes damage to the latter.—*Cresswell v. Wainwright*, 134 N.W. 594, 154 Iowa 167.

Iowa 1911. An instruction that "negligence" is the doing of an act which an ordinarily prudent person would not do in like circumstances is erroneous, as ignoring the fact that negligence may consist in careless omission to act.—*Stokes v. Sac City*, 130 N.W. 786, 151 Iowa 10.

Iowa 1911. In Iowa actionable "negligence" does not depend on its degree, and the differentiation into gross, ordinary, and slight negligence means little more than a matter of comparative emphasis in the discussion of testimony.—*Denny v. Chicago, R.I. & P. Ry. Co.*, 130 N.W. 363, 150 Iowa 460.

Iowa 1910. An instruction that "negligence" consists in doing something which a person of ordinary prudence and care would not have done or would not have omitted to do under the same or similar circumstances is not as clear as it might be, but is not reversible error.—*Du Bois v. Luthmer*, 126 N.W. 147, 147 Iowa 315.

Iowa 1906. A classification of "negligence" as "slight," "ordinary," and "gross" has been quite generally abandoned, and the more rational view adopted that any want of ordinary care constituted actionable negligence.—*Sherwood v. Home Sav. Bank*, 109 N.W. 9, 131 Iowa 528.

Iowa 1906. The doing of an act without that ordinary prudence and discretion which persons of mature mind and sound judgment are presumed to have constitutes "negligence," but will not alone warrant an inference of "malice." Malice is distinguishable from mere negligence, in that it arises from some purpose, while negligence arises from absence of purpose. The characteristic of negligence is inadvertence, or an absence of an intent to injure. This does not imply that the act was done involuntarily or unconsciously, but merely that the person doing it was not conscious that the act constituted a want of reasonable care.—*Jenkins v. Gilligan*, 108 N.W. 237, 131 Iowa 176, 9 L.R.A.N.S. 1087.

Iowa 1906. Defining "negligence" as a failure to exercise ordinary care was held to state the proper test of "negligence," though the case involved the life of an infant four years old.—*Hanley v. Ft. Dodge Light & Power Co.*, 107 N.W. 593, 133 Iowa 326, opinion supplemented on denial of rehearing 110 N.W. 579, 133 Iowa 326.

Iowa 1906. An instruction defining "negligence" as "the want or omission of reasonable care and diligence, the failure to do something which a reasonable person guided by those considerations which ordinarily regulate the conduct of human affairs, under the circumstances would do, or the doing of something which such person under such circumstances, would not do," was proper.—*Martin v. Des Moines Edison Light Co.*, 106 N.W. 359, 131 Iowa 724.

Iowa 1905. An instruction defining "negligence" as the failure to exercise that degree of care and diligence that an ordinarily prudent person would exercise in his own affairs under like or similar circumstances, was not objectionable as eliminating acts of commission.—*German Ins. Co. of Freeport v. Chicago & N.W.R. Co.*, 104 N.W. 361, 128 Iowa 386.

Iowa 1905. An instruction in a personal injury action that "negligence" means the failure to use "that degree of care which the law requires; that is, ordinary care, or the doing of that which ordinary care * * * would dictate should not be done," is not open to the objection that matters of omission are excluded from consideration.—*Struble v. Burlington, C.R. & N.R. Co.*, 103 N.W. 142, 128 Iowa 158.

Iowa 1904. "Negligence" is defined to be the want of "ordinary care"; that is, such care as an

ordinarily prudent person would exercise under like circumstances. There is no precise definition of "ordinary care," but it may be said that it is such care as an ordinarily prudent person would exercise under like circumstances, and should be proportioned to the danger and peril reasonably to be apprehended from a lack of proper prudence.—*Hill v. City of Glenwood*, 100 N.W. 522, 124 Iowa 479.

Iowa 1904. An essential ingredient of any conception of the law of "negligence" is that it involves the violation of a legal duty which one person owes another, the duty to take care for the safety or property of the other; and the converse proposition is that, where there is no legal duty to exercise care, there can be no actionable negligence.—*Saylor v. Parsons*, 98 N.W. 500, 122 Iowa 679, 101 Am.St. Rep. 283, 64 L.R.A. 542.

Kan. 1996. "Negligence" is the lack of due care that a reasonable person would exercise given a particular set of circumstances.—*OMI Holdings, Inc. v. Howell*, 918 P.2d 1274, 260 Kan. 305, answer to certified question conformed to 107 F.3d 21.—*Neglig 231*.

Kan. 1994. Distinction between "negligence" and "negligence per se" is the means and method of ascertainment; the former must be found by fact finder from the evidence while the latter results from violation of the specific requirement of a law or ordinance and the only fact for determination by fact finder is the commission or omission of the specific act inhibited or required.—*Kerns By and Through Kerns v. G.A.C., Inc.*, 875 P.2d 949, 255 Kan. 264.—*Neglig 259, 1693*.

Kan. 1993. "Negligence" exists where there is duty owed by one person to another and breach of that duty occurs, and if recovery is to be had for such negligence, injured party must show causal connection between duty breached and injury received, and that he or she was damaged by the negligence; whether a duty exists is question of law, and whether duty has been breached is question of fact.—*C.J.W. By and Through L.W. v. State*, 853 P.2d 4, 253 Kan. 1.—*Neglig 202, 1692, 1693*.

Kan. 1992. The distinction between "negligence" and "negligence per se" is the means and method of ascertainment, the former must be found by the jury from the evidence while the latter results in the violation of the specific requirement of law or ordinance; the only fact for determination of the jury is the commission or omission of the specific act inhibited or required.—*Cerretti v. Flint Hills Rural Elec. Co-op. Ass'n*, 837 P.2d 330, 251 Kan. 347.—*Neglig 259, 1693*.

Kan. 1989. "Negligence" must be found by fact finder from the evidence, while "negligence per se" results from violation of specific requirement of law or ordinance, and only fact for determination of fact finder is commission or omission of specific act inhibited or required.—*Watkins v. Hartsock*, 783 P.2d 1293, 245 Kan. 756.—*Neglig 259, 1693*.

Kan. 1987. "Negligence" excepted from liability under Tort Claims Act is lack of ordinary care under existing circumstances, failure to do some-

thing that ordinary person would do, or act of person in doing something that ordinary person would not do, measured by all the circumstances then existing; degree of care must be equal to danger reasonably to be anticipated, measured by all facts and circumstances. K.S.A. 75-6104(c, d).—*Beck v. Kansas Adult Authority*, 735 P.2d 222, 241 Kan. 13.—*Mun Corp 723*.

Kan. 1983. "Negligence" involves acting other than as a reasonable person would do in the circumstances.—*Durflinger v. Artiles*, 673 P.2d 86, 234 Kan. 484, answer to certified question conformed to 727 F.2d 888.—*Neglig 233*.

Kan. 1983. "Negligence" is the lack of ordinary care; it is the failure of a person to do something that an ordinary person would do, or the act of a person in doing something that an ordinary person would not do, measured by all the circumstances then existing.—*Allman By and Through Watters v. Holleman*, 667 P.2d 296, 233 Kan. 781.—*Neglig 232*.

Kan. 1983. "Negligence" is the lack of ordinary care; it is the failure of a person to do something that an ordinary person would do, or act of person in doing something that ordinary person would not do, measured by all of circumstances then existing.—*Ettus v. Orkin Exterminating Co., Inc.*, 665 P.2d 730, 233 Kan. 555.—*Neglig 232*.

Kan. 1965. If there is some probability of harm sufficiently serious that ordinary men would take precautions to avoid it, then failure to take such care is "negligence."—*Gard v. Sherwood Const. Co.*, 400 P.2d 995, 194 Kan. 541.—*Neglig 213*.

Kan. 1962. "Negligence" implies some act of commission or omission wrongful in itself, and, in essence, it is lack of due care.—*Goldman v. Bennett*, 371 P.2d 108, 189 Kan. 681.—*Neglig 231*.

Kan. 1962. "Negligence" is a lack of due care.—*Shufelberger v. Worden*, 369 P.2d 382, 189 Kan. 379.—*Neglig 231*.

Kan. 1960. "Negligence" is the lack of due care.—*Krentz v. Haney*, 357 P.2d 793, 187 Kan. 428.—*Neglig 231*.

Kan. 1958. "Negligence" is the absence of due care according to the circumstances, and involves a relationship between man and his fellows.—*Townsend v. Jones*, 331 P.2d 890, 183 Kan. 543.—*Neglig 231*.

Kan. 1958. "Negligence" is present when a person owes a duty not to cause injury to another and commits an act or acts that he should not have committed, or omits to do an act or acts that he should have done, either or any of which is contrary to or different from the conduct of an ordinary, reasonable and prudent man under same or similar circumstances, whereby another suffers injury.—*Mills v. State Auto. Ins. Ass'n*, 326 P.2d 254, 183 Kan. 268.—*Neglig 202*.

Kan. 1958. The distinction between "negligence" and "negligence per se" is the means and method of ascertainment, in that the former must be found by jury from the evidence, while the latter

results from violation of the specific requirement of law or ordinance, and the only fact for determination of the jury is the commission or omission of the specific act inhibited or required.—*Kendrick v. Atchison, T. & S. F. R. Co.*, 320 P.2d 1061, 182 Kan. 249.—*Neglig* 200, 259, 1683.

Kan. 1957. "Negligence" is a want of ordinary care and may consist of acts of omission or acts of commission.—*Hickert v. Wright*, 319 P.2d 152, 182 Kan. 100.—*Neglig* 232.

Kan. 1949. "Negligence" is the lack of due care.—*Lawrence v. Kansas Power & Light Co.*, 204 P.2d 752, 167 Kan. 45.—*Neglig* 231.

Kan. 1947. "Wantonness" is distinct from "negligence" and differs in kind, but not in degree.—*Elliott v. Peters*, 185 P.2d 139, 163 Kan. 631.—*Neglig* 275.

Kan. 1947. "Wanton negligence" in operating automobile requires mental attitude of will to injure or such indifference to consequences, with realization that catastrophe is imminent, as amounts to such willingness, while "negligence" is merely failure to exercise due care.—*Elliott v. Peters*, 185 P.2d 139, 163 Kan. 631.—*Autos* 146, 158.

Kan. 1947. "Negligence" is the failure to exercise care that the circumstances justly demand.—*Rowell v. City of Wichita*, 176 P.2d 590, 162 Kan. 294.—*Neglig* 230.

Kan. 1943. An employee's "assumption of risk" of injury because of defective tools furnished by employer begins after employer has performed his full duty by providing safe and reasonably suitable tools, and failure to perform such duty constitutes "negligence", unless employee knows of defective condition of tools or could know thereof by reasonable observation.—*Fishburn v. International Harvester Co.*, 138 P.2d 471, 157 Kan. 43.—*Emp Liab* 36, 136.

Kan. 1943. Where a defect in sidewalk is known and no care is used by pedestrian, "negligence" is established and where the evidence is undisputed, there is a "question of law".—*Taggart v. Kansas City*, 134 P.2d 417, 156 Kan. 478.—*Mun Corp* 805(2), 821(23.1).

Kan. 1939. The action of driver of motorbus in starting bus before passenger, who has boarded bus and is safely within bus, has time to find a seat or is properly located, does not constitute actionable "negligence".—*O'Callahan v. Wichita Transp. Corporation*, 92 P.2d 23, 150 Kan. 280.—*Carr* 287(5).

Kan. 1937. "Negligence" is conduct which creates undue risk of harm to other.—*Farmer v. Central Mut. Ins. Co. of Chicago, Ill.*, 67 P.2d 511, 145 Kan. 951.—*Neglig* 231.

Kan. 1936. "Negligence" to be "actionable" must result in damage to some one, which result, in the absence of wantonness or *malo animo*, might have been reasonably foreseen by a man of ordinary intelligence and prudence and be the probable result of the initial act. To constitute "actionable negligence," there must be not only a lack of care, but such lack of care must involve a breach of some

duty owed to a person who is injured in consequence of such breach. In every case involving negligence, there are necessarily three elements essential to its existence. Existence of a duty on the part of defendant to protect plaintiff from injury; failure of defendant to perform that duty; and injury to plaintiff from such failure of defendant, and, when these elements are brought together, they unitedly constitute "actionable negligence," and the absence of any one of these elements renders the complaint bad or the evidence insufficient. "Negligence" is an unintentional breach of a legal duty causing damage reasonably foreseeable, without which breach the damage would not have occurred.—*McMillen v. Summuduwoot Lodge No. 3, I.O.O.F.*, 54 P.2d 985, 143 Kan. 502.

Kan. 1934. Automobile guest statute relieves host from liability to guest for injuries resulting from "negligence" as that term is distinguished from "wantonness". *Rev.St.Supp.1933*, 8-122b.—*Sayre v. Malcom*, 31 P.2d 8, 139 Kan. 378.—*Autos* 181(1).

Kan. 1934. Reckless or wanton conduct differs not in degree but in kind from negligent conduct, and such a thing as wanton "negligence" cannot exist. If the conduct be wanton, it is not negligent. If it be negligent, it is not wanton. Reckless or wanton conduct also differs from intentional conduct, because intent to injure is not present.—*Koster v. Matson*, 30 P.2d 107, 139 Kan. 124.

Kan. 1933. The failure to exercise due care is "negligence," which failure may arise from acts of commission, or from omission. "Negligence," properly speaking, does not include willful, intentional injury.—*Stout v. Gallemore*, 26 P.2d 573, 138 Kan. 385.

Kan. 1916. "Negligence" is the violation or disregard of a duty.—*Jones v. Atchison, T. & S.F. Ry. Co.*, 157 P. 399, 98 Kan. 133.

Kan. 1905. "Negligence" is the failure to exercise the ordinary care of prudent men under all the attending circumstances.—*Stephenson v. Corder*, 80 P. 938, 71 Kan. 475, 114 Am.St.Rep. 500, 69 L.R.A. 246.

Ky. 2000. Under the Kentucky Informed Consent Statute, an action for a physician's failure to disclose a risk or hazard of a proposed treatment or procedure is one of "negligence," which brings into question professional standards of care, and thus the statute does not apply when a procedure is performed without consent.—*Coulter v. Thomas*, 33 S.W.3d 522, as amended.—*Health* 906.

Ky. 1995. The difference between negligence and recklessness is qualitative, "negligence" consisting of failure to exercise ordinary care and "recklessness" consisting of conscious indifference.—*Hoke v. Cullinan*, 914 S.W.2d 335, rehearing denied.—*Neglig* 232, 274.

Ky. 1973. The words "negligence" and "wrongful acts," as used in constitutional section providing, *inter alia*, that "Whenever the death of a person shall result from an injury inflicted by negligence or wrongful act, then, in every such case, damages may

be recovered * * *," are sufficiently broad to embrace every degree of tort that can be committed against the person. Const. § 241.—Saylor v. Hall, 497 S.W.2d 218.—Death 9.

Ky. 1964. "Negligence" is conduct involving unreasonable risk of harm to others, and includes a failure to act where, under circumstances, a reasonable man would do so.—Com. Dept. of Highways v. Begley, 376 S.W.2d 295.—Neglig 233.

Ky. 1955. "Negligence" of physician or surgeon in performance of operation is failure to use degree of care and skill exercised generally by physicians and surgeons in similar communities in performance of same type of operation.—Fields v. Rutledge, 284 S.W.2d 659, 58 A.L.R.2d 210.—Health 620, 665.

Ky. 1955. In provision of constitution that whenever the death of a person shall result from an injury inflicted by negligence or wrongful act, then, in every such case, damages may be recovered, the word, "negligence" is used in its well known legal significance as meaning actionable negligence which would authorize recovery for the injury if death had not ensued. Const. § 241.—St. Walburg Monastery of Benedictine Sisters of Covington, Ky. v. Feltner's Adm'r, 275 S.W.2d 784.—Death 14(1).

Ky. 1953. "Negligence" consists of failure to observe duty owed to another.—Eaton v. Louisville & N. R. Co., 259 S.W.2d 29.—Neglig 250.

Ky. 1947. Actionable "negligence" consists of a duty, violation thereof, and consequent injury, and absence of any of such elements is fatal to claim.—Howard v. Fowler, 207 S.W.2d 559, 306 Ky. 567.—Neglig 202.

Ky. 1947. "Negligence" means failure to exercise "ordinary care", which is degree of care which person of ordinary prudence is accustomed to bestow on matter in hand under similar circumstances and conditions.—Arnold v. Sauer, 202 S.W.2d 1001, 305 Ky. 48.—Neglig 232.

Ky. 1944. "Negligence" is the violation of a duty which the one guilty of it owed to the one injured because of it.—Gatliff Coal Co. v. Broyles' Adm'r, 180 S.W.2d 406, 297 Ky. 516.—Neglig 250.

Ky. 1943. "Negligence" is the failure to perform a duty which one owes to another, and where there is no duty there is no negligence.—City of Bellevue v. Hall, 174 S.W.2d 24, 295 Ky. 57.—Neglig 210.

Ky. 1941. "Negligence" can only arise from a failure of duty possible of performance.—Louisville & N. R. Co. v. Sloan, 155 S.W.2d 23, 287 Ky. 663.—Neglig 250.

Ky. 1940. The very fact that taxicab ran into or against bridge structure proclaimed "negligence" as basis for recovery for resulting death of and injury to passengers, and the "res ipsa loquitur" rule applied, in absence of possible contributing or superinducing cause, such as collision with another automobile or unavoidable condition.—Grigsby v. Smith, 146 S.W.2d 719, 285 Ky. 48.—Carr 316(4).

Ky. 1940. "Negligence" is the failure to do what a reasonably prudent person would do under the same circumstances.—Maise v. Imperial Oil Co., 137 S.W.2d 1104, 282 Ky. 124.—Neglig 233.

Ky. 1940. To constitute "negligence" on the part of the engineer of a train which injures a trespasser, it must be shown not only that engineer discovered trespasser's peril but that he discovered it in time to avoid injury by exercising ordinary care in using the means at hand consistent with safety of persons on train, and that he failed to do so.—Cincinnati, N. O. & T. P. Ry. Co. v. Humphrey's Adm'r, 136 S.W.2d 537, 281 Ky. 432.—R R 390.

Ky. 1939. "Negligence" in Kentucky is either "gross" or "ordinary"; "ordinary negligence" being defined as the absence of ordinary care, and "gross negligence" as the absence of slight care.—Louisville & N.R. Co. v. George, 129 S.W.2d 986, 279 Ky. 24.—Neglig 232, 273.

Ky. 1939. As "negligence" is failure to perform a duty, there can be no negligence where there is no duty.—Martin v. City of Winchester, 128 S.W.2d 543, 278 Ky. 200.

Ky. 1939. A distributor of electricity must take cognizance of apparent probability of danger, and failure to remedy a defect in distribution system liable to cause injury to person who is where he has a right to be is "negligence."—Kentucky-Tennessee Light & Power Co. v. Priest's Adm'r, 127 S.W.2d 616, 277 Ky. 700.—Electricity 16(1).

Ky. 1938. "Negligence" in master-servant relation is master's failure to observe duty owing servant.—Magness' Adm'r v. Hutchinson, 117 S.W.2d 1041, 274 Ky. 226.

Ky. 1938. In the relation of master and servant, "negligence" is master's failure to observe some duty that he owes the servant.—Elcomb Coal Co. v. Gray's Adm'r, 115 S.W.2d 1056, 273 Ky. 230.

Ky. 1938. The trial court's failure to define "negligence" in instruction affirmatively stating statutory duties of drivers of trucks colliding at street intersection, and telling jury that it was such drivers' duty to exercise degree of care usually exercised by ordinarily careful and prudent persons under same or similar circumstances, and that jury should find for plaintiff in action against owners of such trucks for injuries to third person, if drivers failed to observe one or more of enumerated duties, was not error, as such instructions in effect defined "negligence" and "ordinary care."—W.M. Abbott Transfer Co. v. Kruse, 114 S.W.2d 731, 272 Ky. 479.—Autos 246(9).

Ky. 1938. The term "negligence" need not be used or expressly defined in instructions, where court properly instructs jury as to facts from which it may determine existence or absence of negligence.—W.M. Abbott Transfer Co. v. Kruse, 114 S.W.2d 731, 272 Ky. 479.—Neglig 1720.

Ky. 1937. "Negligence" is the failure to perform a duty by one owing it to one complaining of failure to perform such duty.—Commonwealth v. Madison, 108 S.W.2d 519, 269 Ky. 571.—Neglig 250.

Ky. 1936. "Negligence" is not determined by what any one looking back after accident sees should have been done, but by what ordinarily careful man under circumstances existing before accident would foresee and deem should be done.—*Wilford v. Cooper*, 98 S.W.2d 39, 266 Ky. 64.—Neglig 232.

Ky. 1936. Whether duty to exercise ordinary care not to injure another is imposed by common law or statute, failure to perform duty constitutes "negligence" and renders party liable for injuries resulting therefrom.—*Southern Mining Co. v. Saylor*, 95 S.W.2d 236, 264 Ky. 655.—Neglig 250.

Ky. 1936. "Negligence" for consequences of which master is liable to servant consists not merely in general breach of duty, but breach must be violation of duty that master owes to particular servant at time and place when and where servant is injured.—*Lay's Adm'r v. Harlan Producers Coal Corp.*, 90 S.W.2d 716, 262 Ky. 612.

Ky. 1935. "Negligence" is the breach of a duty which one owes to another by reason of the relationship existing or the circumstances presented.—*Trainor's Adm'r v. Keller*, 79 S.W.2d 232, 257 Ky. 840.—Neglig 200.

Ky. 1935. "Negligence" is the absence of care in the performance of an act, which may be one of omission or of commission.—*Trainor's Adm'r v. Keller*, 79 S.W.2d 232, 257 Ky. 840.—Neglig 200.

Ky. 1933. Test in determining, whether parents were guilty of "negligence" contributing to death of child is whether under circumstances they or either of them exercised degree of care which ordinarily prudent person would have exercised under like circumstances.—*Brown McClain Transfer Co. v. Major's Adm'r*, 65 S.W.2d 992, 251 Ky. 741.—Death 24.

Ky. 1932. Words "negligence" and "wrongful act" in constitutional provision respecting damages for death embrace every degree of tort committed against person. Const. § 241.—*Ludwig v. Johnson*, 49 S.W.2d 347, 243 Ky. 533.—Death 9.

Ky. 1932. "Negligence" is the breach of a duty which one owes to another by reason of the relationship existing or the circumstances presented.—*Stober v. Embry*, 47 S.W.2d 921, 243 Ky. 117.—Neglig 250.

Ky. 1931. "Negligence" consists of failure to observe duty owed to person under circumstances shown.—*Auto Livery Co. v. Stone*, 36 S.W.2d 349, 237 Ky. 686.—Neglig 250.

Ky. 1930. "Negligence" is failure to use care which ordinarily prudent man would use under similar circumstances.—*Brooks-Calloway Co. v. Carroll*, 29 S.W.2d 592, 235 Ky. 41.

Ky. 1929. "Negligence" of employer is failure to observe some duty that employer owes to employee.—*West Kentucky Coal Co. v. Parker's Adm'r*, 17 S.W.2d 753, 229 Ky. 685.—Emp Liab 11.

Ky. 1928. "Negligence" in relation of master and servant is failure to observe some duty that

master owes to servant.—*Horse Creek Mining Co. v. Frazier's Adm'r*, 5 S.W.2d 1064, 224 Ky. 211.—Emp Liab 1.

Ky. 1927. "Negligence" is failure to do what ordinarily prudent man would do.—*Illinois Cent. R. Co. v. Cash's Adm'r*, 299 S.W. 590, 221 Ky. 655.—Neglig 232.

Ky. 1925. "Negligence" defined.—*Simpson v. Louisville, H. & St. L.R. Co.*, 269 S.W. 749, 207 Ky. 623.—Neglig 200.

Ky. 1918. "Negligence" is a relative term, dependent upon circumstances and conditions, and is a failure or omission to do or abstain from doing that which an ordinarily prudent man would do under the same conditions or circumstances.—*Kelch's Adm'r v. National Contract Co.*, 199 S.W. 796, 178 Ky. 632.

Ky. 1916. In an action by a servant for injuries received in the course of his employment, his petition, alleging negligence of the foreman, was not insufficient for failure to allege gross negligence, the generic word "negligence" including all degrees.—*Illinois Cent. R. Co. v. Kelly*, 181 S.W. 375, 167 Ky. 745.—Emp Liab 180.

Ky. 1914. "Negligence" is the absence of ordinary care, and ordinary care is such care as an ordinarily prudent man would use under similar circumstances involving his own interests.—*John B. Carter Co. v. Cox*, 169 S.W. 472, 159 Ky. 711.

Ky. 1913. A carrier which received horses for transportation, and which negligently struck or bumped the car in which they were being hauled against its engine or other cars so as to cause one of the lanterns used by the shipper's attendants, and which was suitably wired, to set fire to the car and to kill part of the horses and injure others, using the term "negligence" as a failure to use "ordinary care," that being such care as a person of ordinary prudence would exercise under like or similar circumstances, was liable for such loss and injury.—*Louisville & N.R. Co. v. Woodford*, 153 S.W. 722, 152 Ky. 398, rehearing denied 154 S.W. 1083, 153 Ky. 185, appeal dismissed 34 S.Ct. 739, 234 U.S. 46, 58 L.Ed. 1202.

Ky. 1911. "Negligence" is the absence of ordinary care, and ordinary care is that degree of care which an ordinarily prudent person would exercise under circumstances like or similar to those shown.—*Louisville, H. & St. L. Ry. Co. v. Stillwell*, 134 S.W. 202, 142 Ky. 330.

Ky. 1910. "Negligence" is properly defined in an instruction as a failure to use ordinary care, and ordinary care which ordinarily prudent persons are accustomed to exercise under like or similar circumstances.—*Louisville & N.R. Co. v. Lynch*, 126 S.W. 362, 137 Ky. 696.

Ky. 1909. "Negligence" is ordinarily predicated in terms of knowledge, and liability attaches only in case the defendant knows, or by the exercise of ordinary care could know. In an action for injuries received in a street by being struck by a bottle that was thrown by W. from the roof garden of a hotel,

there was no evidence to show that W. was boisterous, or that he threatened any one, and no evidence from which it could be inferred that he would throw the bottle in question. An instruction as to the liability of the hotel company that if the jury believed that W. threw the bottle from the roof garden, and plaintiff was injured thereby, and if at the time he was intoxicated, and his behavior was such as would indicate to a man of average prudence that he might throw a bottle to the street below, and that these facts were known, or by ordinary care could have been known, to the defendant or its agents, then it became the duty of the defendant and its agents to remove W. from the roof garden or otherwise control him, and that the law in that event is for the plaintiff, is not erroneous, as basing the liability of defendant on knowledge rather than on belief, or reasonable grounds for belief.—*Bruner v. Seelbach Hotel Co.*, 117 S.W. 373, 133 Ky. 41, 19 Am. Ann. Cas. 217.

Ky. 1909. "Negligence" is the failure by omission or acts of commission, to discharge a duty, so that, if there is no duty, there cannot be actionable negligence.—*Cincinnati, N.O. & T.P. Ry. Co. v. Harrod's Adm'r*, 115 S.W. 699, 132 Ky. 445.—*Neglig 210*.

Ky. 1909. "Negligence" is the failure, by omission or acts of commission, to discharge a duty, so that, if there is no duty, there cannot be actionable negligence, and an act may be negligent as to one person and innocuous as to another.—*Cincinnati, N.O. & T.P. Ry. Co. v. Harrod's Adm'r*, 115 S.W. 699, 132 Ky. 445.—*Neglig 210*.

Ky. 1908. Under Ky.St.1903, § 6, giving a cause of action for a death caused by another's "negligence," gross negligence need not be shown.—*Cincinnati, N.O. & T.P. Ry. Co. v. Evans' Adm'r*, 110 S.W. 844, 129 Ky. 152, 33 Ky.L.Rptr. 596.—*Death 14(2)*.

Ky. 1908. "Negligence" is the failure to use or exercise ordinary care.—*Adkisson's Adm'r v. Louisville, H. & St. L. Ry. Co.*, 110 S.W. 284, 33 Ky. L.Rptr. 204.

Ky. 1908. "Negligence," generally speaking, whether it be ordinary or gross, is merely an omission to perform a duty, and is not an affirmative wrongful act, though there may be instances where gross negligence is of an affirmative character, and amounts to an intentional wrong, or a reckless disregard of the rights of others.—*Schulte v. Louisville & N.R. Co.*, 108 S.W. 941, 128 Ky. 627, 33 Ky.L.Rptr. 31.

Ky. 1907. "Negligence" is the antithesis of duty. Where there is no duty, there cannot be negligence.—*Thomas v. Cincinnati, N.O. & T.P. Ry. Co.*, 105 S.W. 379, 127 Ky. 159, 32 Ky.L.Rptr. 67.

Ky. 1907. The words "negligence" and "wrongful act" are sufficiently broad to embrace every degree of tort that can be committed against the person. Negligence, constituting a cause of civil action, has been defined as such an omission by a responsible person to use that degree of care, diligence and skill, which it was his legal duty to use

for the protection of another person from injury, as in a natural and continuous sequence causes unintended damage to the latter. The word implies a breach of duty, and a person cannot be legally negligent, so as to subject him to damages, except in respect to others to whom he owes a duty.—*Howard's Adm'r v. Hunter*, 104 S.W. 723, 126 Ky. 685, 31 Ky.L.Rptr. 1092.

Ky. 1907. "Negligence" is a want of "ordinary care"; that is, such care as persons of ordinary prudence usually exercise under similar circumstances.—*Dorris v. Warford*, 100 S.W. 312, 124 Ky. 768, 30 Ky.L.Rptr. 963, 9 L.R.A.N.S. 1090, 14 Am. Ann. Cas. 602.

Ky. 1906. An instruction that "ordinary care," as used in instructions given in an action against a railroad for the death of a traveler in a collision with a train at a crossing, meant such care as ordinarily prudent persons would exercise under circumstances similar to those proven in the case, and that "negligence" was the failure to exercise ordinary care, was correct.—*Louisville & N.R. Co. v. Lucas' Adm'r*, 98 S.W. 308, 30 Ky.L.Rptr. 359, rehearing denied 99 S.W. 959, 30 Ky.L.Rptr. 539.

Ky. 1906. "Negligence" is the failure to use ordinary care, which is such care as an ordinarily prudent person would usually exercise under circumstances similar to those proven in the case under investigation.—*Henderson City Ry. Co. v. Lockett*, 98 S.W. 303, 30 Ky.L.Rptr. 321.

Ky. 1906. In an action for injuries to a passenger alleged to have been occasioned by a lurch of the train as he alighted, an instruction to find for plaintiff if, *inter alia*, defendant "negligently or carelessly gave the [train] a sudden or violent jerk," defines "negligence" in language not susceptible of criticism by defendant, not requesting a definition of such term.—*Louisville & N.R. Co. v. Deason*, 96 S.W. 1115, 29 Ky.L.Rptr. 1259.

Ky. 1906. "Negligence" in respect to the duties of a youthful employee in the operation of a machine means a want of that degree of care which the majority of careful and prudent persons of his age, intelligence, and discretion are accustomed to exercise for their own protection under like or similar circumstances.—*Cohankus Mfg. Co. v. Rogers' Guardian*, 96 S.W. 437, 29 Ky.L.Rptr. 747.

Ky. 1906. "Negligence" is the failure to use such care as ordinarily careful and prudent persons ordinarily exercise under the same or similar circumstances.—*Cornelius v. South Covington & C. St. Ry. Co.*, 93 S.W. 643, 29 Ky.L.Rptr. 505.

Ky. 1906. The word "negligence," as used in an instruction for the wrongful death of an employee, means the failure to use ordinary care.—*Illinois Cent. R. Co. v. Cane's Adm'r*, 90 S.W. 1061, 28 Ky.L.Rptr. 1018.

Ky. 1904. "Negligence" is the failure to exercise such care as ordinarily prudent persons exercise under like or similar circumstances.—*Kentucky & I. Bridge & R. Co. v. Shrader*, 80 S.W. 1094, 26 Ky.L.Rptr. 206.

Ky. 1904. "Negligence" is the failure to do something that the doer in the exercise of ordinary care should have done.—*Shemwell v. Owensboro & N.R. Co.*, 78 S.W. 448, 117 Ky. 556, 25 Ky.L.Rptr. 1671.

Ky. 1904. "Negligence" implies a failure to do something which duty or prudence requires should have been done.—*Gill v. Fugate*, 78 S.W. 188, 117 Ky. 257, 25 Ky.L.Rptr. 1367.

Ky. 1904. "Negligence," as used in the law, may be defined as the failure to discharge a legal duty, whereby injury occurs. There can be no negligence where there is no duty imposed.—*Franklin v. Tracy*, 77 S.W. 1113, 117 Ky. 267, 25 Ky.L.Rptr. 1409, 63 L.R.A. 649, rehearing denied 78 S.W. 1112, 117 Ky. 267, 25 Ky.L.Rptr. 1909, 63 L.R.A. 649.

Ky. 1897. "Wrongful" is a more comprehensive term than the word "negligence." As used in Const. § 241, giving a right to recover damages whenever the death of a person shall result from an injury inflicted by negligence or "wrongful act," the words denote or embrace all acts, other than those constituting mere negligence, which are wrong and inflict an injury resulting in death.—*Clark's Adm'x v. Louisville & N.R. Co.*, 39 S.W. 840, 101 Ky. 34, 18 Ky.L.Rptr. 1082, 36 L.R.A. 123.

Ky.App. 1977. In action arising out of intersectional automobile collision as one driver was heading north on inferior stop street and other driver was heading west on superior through street, trial court's instruction that driver moving from inferior street into superior street had duty to exercise "highest degree of care" in proceeding cautiously into intersection until driver's view was unobstructed, was prejudicially erroneous, in that nothing in statute setting out what driver must do in obedience to stop sign requires such degree of care; "negligence" is failure to exercise ordinary care, which is standard in such cases. KRS 189.330(5).—*Crumpler v. Winkler*, 564 S.W.2d 536.—App & E 1064.1(3); Autos 246(9).

La. 1976. "Negligence" is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances. LSA-R.S. 26:88(2); LSA-C.C. arts. 2315, 2316.—*Pence v. Ketchum*, 326 So.2d 831.—Neglig 233.

La. 1942. "Negligence" is the want of ordinary or reasonable care which should be exercised by a person of ordinary prudence under all the circumstances in view of probable danger of injury, and it excludes a condition of mind which is capable either of designing an injury to another or of agreeing that an injury should be received by another.—*State v. Vinzant*, 7 So.2d 917, 200 La. 301.—Neglig 233, 275.

La. 1942. The terms "negligence" and "willfulness" signify opposites of each other, in that absence of intent is a distinguishing characteristic of negligence, whereas willfulness cannot exist without purpose or design, and a willful injury will not be

inferred when result may be reasonably attributed to negligence or inattention.—*State v. Vinzant*, 7 So.2d 917, 200 La. 301.—Neglig 201, 275.

La. 1941. "Negligence" is any conduct, except conduct recklessly disregardful of the interest of others, which falls below the standard established by law for protection of others against unreasonable risk of harm.—*Fegan v. Lykes Bros. S. S. Co.*, 3 So.2d 632, 198 La. 312.

La. 1927. "Ordinary care" depends on circumstances; "negligence."—*Prescott v. Central Contracting Co.*, 111 So. 269, 162 La. 885.—Neglig 232.

La. 1920. Where a brakeman, who had cut out a car, notified the conductor that it was too close to other tracks, but the conductor failed to change it, the conductor must be deemed guilty of "negligence," the brakeman deferring to his superior, and recovery by the brakeman, who came in contact with the car during switching operations, cannot be denied on the ground the negligence was solely that of the brakeman.—*Authement v. Louisiana Western R. Co.*, 86 So. 215, 147 La. 816.

La. 1919. The doctrine of "last clear chance" is not synonymous with the doctrine of "negligence."—*Nolan v. Illinois Cent. R. Co.*, 82 So. 590, 145 La. 483.—Neglig 530(1).

La. 1907. "'Negligence' is a breach of legal duty. It must be shown. It will not be presumed. The burden of proof rests with the party asserting or charging 'negligence.'"—*Meyers v. Ruddock Orleans Cypress Co.*, 43 So. 448, 118 La. 805.

La. 1904. "Negligence" implies some act of omission or commission wrongful in itself.—*Whitworth v. Shreveport Belt Ry. Co.*, 36 So. 414, 112 La. 363, 65 L.R.A. 129.

La.App. 1 Cir. 1999. "Negligence" is conduct that falls below the standard established by law for the protection of others against unreasonable risk of harm; it is the breach of a duty, statutory or non-statutory, owed to another to protect that person from the particular harm that ensued.—*Classert v. Butler*, 746 So.2d 787, 1998-1991 (La.App. 1 Cir. 11/5/99).—Neglig 250.

La.App. 1 Cir. 1998. Failure to take every precaution against all foreseeable injury to another does not necessarily constitute "negligence"; negligence requires the risk to be both foreseeable and unreasonable.—*May v. Mitchell Bros., Inc.*, 712 So.2d 622, 1997-1270 (La.App. 1 Cir. 5/15/98), rehearing denied, writ denied 727 So.2d 1168, 1998-1953 (La. 10/30/98).—Neglig 213, 233.

La.App. 1 Cir. 1998. Failure to take a particular precaution to guard against injury to another in connection with a risk constitutes "negligence" only when it appears such a precaution would have been undertaken under the circumstances by a reasonably prudent individual.—*May v. Mitchell Bros., Inc.*, 712 So.2d 622, 1997-1270 (La.App. 1 Cir. 5/15/98), rehearing denied, writ denied 727 So.2d 1168, 1998-1953 (La. 10/30/98).—Neglig 233.

La.App. 1 Cir. 1993. "Negligence" is conduct which falls below standard established by law for

protection of others against unreasonable risk of harm; it is breach of duty, statutory or nonstatutory, owed to another to protect that person from particular harm that ensued. (Per Chiasson, J. pro tem., with one Judge concurring in result.)—Office of Com'r of Ins. v. Hartford Fire Ins. Co., 623 So.2d 37, writ denied 635 So.2d 1131, 1993-2125 (La. 4/7/94).—Neglig 202.

La.App. 1 Cir. 1991. Generally, "negligence" is defined as conduct which falls below standard established by law for protection of others against unreasonable risk of harm. LSA-C.C. art. 2315.—Barnes v. Thames, 578 So.2d 1155, writ denied 577 So.2d 1009, writ denied 577 So.2d 1009.—Neglig 233.

La.App. 1 Cir. 1976. "Negligence" is failure to exercise ordinary and reasonable care under circumstances to avoid injury to one owed duty of care; stated otherwise, negligence is breach of duty to protect against unreasonable risk of foreseeable harm.—Lanieux v. State Through Louisiana State Penitentiary and Dept. of Corrections, 328 So.2d 765, writ denied 334 So.2d 427.—Neglig 213, 233.

La.App. 1 Cir. 1975. "Negligence" is breach of duty of care owed the injured party; thus if there is no duty to exercise care as to a given plaintiff, a defendant's conduct does not amount to negligence and is not actionable.—Lea v. Baumann Surgical Supplies Inc., 321 So.2d 844, writ denied 325 So.2d 279, writ denied 325 So.2d 279.—Neglig 210.

La.App. 1 Cir. 1975. "Negligence" is the failure to exercise that degree of care ordinarily expected and required of reasonably prudent person under same or similar circumstances.—Fire & Cas. Ins. Co. of Connecticut v. Garrick, 312 So.2d 103, application denied 313 So.2d 845.—Neglig 233.

La.App. 1 Cir. 1973. "Negligence" is the failure to exercise ordinary and reasonable care under the circumstances to avoid injury to one to whom a duty of care is owed, or is breach of a duty to protect against an unreasonable risk of foreseeable harm.—Traders & General Ins. Co. v. Robison, 289 So.2d 178.—Neglig 233.

La.App. 1 Cir. 1971. "Negligence" is failure to exercise that degree of care which may be expected of reasonably prudent individual under the same or similar circumstances.—Aucoin v. Lodrigues, 252 So.2d 758.—Neglig 233.

La.App. 1 Cir. 1967. Word "fault" as envisioned in code article relating to general tort liability is synonymous with "negligence". LSA-C.C. art. 2315.—Samson v. Southern Bell Tel. & Tel. Co., 205 So.2d 496.—Neglig 200.

La.App. 1 Cir. 1960. "Negligence" is the failure to exercise reasonable care to a person to whom duty to exercise reasonable care is owed. LSA-C.C. art. 2315.—Lyons v. Jahncke Service, Inc., 125 So.2d 619.—Neglig 233.

La.App. 1 Cir. 1958. "Negligence" is conduct creating an undue or unreasonable risk of harm or injury to others, and duty, breach of which is negligence, is measured by exigencies of the situation,

and risk reasonably to be perceived defines duty to be obeyed. LSA-R.S. 14:97, 45:324.—Bergeron v. Greyhound Corp., 100 So.2d 923.—Neglig 213, 233.

La.App. 1 Cir. 1955. "Negligence" is a violation of a relative right and entitles one injured thereby to recover the damages occasioned him thereby. LSA-C.C. art. 2315.—Harrison v. Petroleum Surveys, 80 So.2d 153.—Neglig 200.

La.App. 1 Cir. 1950. Where an injury is caused by instrumentality under exclusive control of defendant, and it is such as would not ordinarily happen if party having control of instrumentality had used proper care, there arises an inference or presumption of "negligence".—Lejeune v. Collard, 44 So.2d 504, 17 A.L.R.2d 550.—Neglig 1613, 1614.

La.App. 1 Cir. 1942. A motorist, crashing into rear of automobile, which she failed to see stopped on right side of highway pavement until she was within 40 or 50 feet therefrom, though its lights and those of wrecker blocking highway ahead of it were burning and there were flares in front of and behind wrecker, was guilty of "negligence" constituting "proximate cause" of accident.—Orphey v. Sutton, 8 So.2d 766.—Autos 173(6), 201(5).

La.App. 1 Cir. 1942. It is "negligence" to drive an automobile with defective brakes. Act No. 286 of 1938, § 9.—Russo v. Aucoin, 7 So.2d 744.—Autos 148.

La.App. 1 Cir. 1942. One driving automobile with defective brakes so fast around curve in road as to be unable to stop before reaching another automobile, which came into his view when he was 300 or 400 feet behind it, was guilty of "negligence," constituting sole "proximate cause" of collision between his automobile and approaching truck just after striking such other automobile in rear, and hence is liable for damages sustained by truck owner riding therein.—Russo v. Aucoin, 7 So.2d 744.—Autos 148, 168(7), 201(2), 201(3).

La.App. 1 Cir. 1942. It is "negligence" to drive a motor vehicle at greater rate of speed than is prudent under the circumstances. Act No. 286, of 1938, § 3, rule 4(a).—Russo v. Aucoin, 7 So.2d 744.—Autos 168(1).

La.App. 1 Cir. 1942. A motorist, whose view ahead is obstructed by curve in road or other obstruction, should drive at speed which will permit him to stop before arriving at any vehicle, person, animal, or obstruction in road, which may come into his view ahead of him, whether it be stationary, moving in same direction, or crossing road, and driving of automobile at greater rate of speed under such circumstances is "negligence". Act No. 286 of 1938, § 3, rule 4(a).—Russo v. Aucoin, 7 So.2d 744.—Autos 168(7), 168(9).

La.App. 1 Cir. 1942. Persons riding in automobile as driver's guests, with knowledge of defectiveness of its brakes, are guilty of "negligence".—Russo v. Aucoin, 7 So.2d 744.—Autos 198(1).

La.App. 1 Cir. 1941. There must be a duty before there can be "negligence".—Williams v. May-er, 4 So.2d 71.—Neglig 210.

La.App. 1 Cir. 1939. In order for the operator of a motorbus to be guilty of negligence in starting bus, the movement must have been one that is unusual in the practical operation of starting a motor vehicle and of a character accompanied with sufficient force or violence as to take the movement out of the ordinary jolts and jars incident to that method of travel and transportation, and mere fact that bus is started before passenger has reached seat does not of itself constitute "negligence."—*Hughes v. Baton Rouge Elec. Co.*, 188 So. 473.—Carr 298.

La.App. 1 Cir. 1939. The failure to display tail light, or some other form of warning on a truck or other vehicle that is parked on highway at night, constitutes "negligence." Act No. 164 of 1936.—*Broussard v. Krause & Managan*, 186 So. 384.—*Autos 173(5)*.

La.App. 1 Cir. 1932. In proceeding for compensation for death of watchman, killed in self-defense by another whom he assaulted, issue of "negligence" held not involved. Act No. 20 of 1914, § 28, LSA-R.S. 23:1081.—*Toney v. Geo. A. Fuller Co.*, 143 So. 541.—*Work Comp 800*.

La.App. 1 Cir. 1929. "Negligence" is failure to observe or do something one ought to have seen or done.—*Lipscomb v. Standard Highway Co.*, 124 So. 156, 11 La.App. 508.—*Neglig 200*.

La.App. 2 Cir. 1993. "Negligence" is conduct that breaches legal duty owed by defendant to plaintiff and causes in fact injury to plaintiff.—*Weaver v. Valley Elec. Membership Corp.*, 615 So.2d 1375.—*Neglig 202*.

La.App. 2 Cir. 1992. Generally, "negligence" is defined as conduct which falls below standard established by law for protection of others against unreasonable risk of harm.—*Clark v. Ark-La-Tex Auction, Inc.*, 593 So.2d 870, writ denied 596 So.2d 210.—*Neglig 233*.

La.App. 2 Cir. 1985. "Negligence" is conduct which falls below the standard established by law for the protection of others against unreasonable risk of injury; it is a departure from the conduct expected of a reasonable prudent man under like circumstances.—*Blakeney v. Tidewater Compression Service, Inc.*, 463 So.2d 914, writ denied 467 So.2d 535.—*Neglig 233*.

La.App. 2 Cir. 1984. "Negligence" is conduct which falls below standard established by law for protection of others against unreasonable risk or harm; it is a departure from conduct expected of a reasonable, prudent man under like circumstances.—*Craft v. Caldwell Parish Police Jury*, 455 So.2d 1226.—*Neglig 233*.

La.App. 2 Cir. 1972. Word "fault" within statute providing that "every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it" is synonymous with "negligence." LSA-C.C. art. 2315.—*Larkin v. U. S. Fidelity & Guaranty Co.*, 258 So.2d 132.—*Neglig 222*.

La.App. 2 Cir. 1972. "Negligence" is a failure to do what a reasonable and prudent person would ordinarily do under the circumstances, or the doing of what such a person under the existing circumstances would not do.—*Larkin v. U. S. Fidelity & Guaranty Co.*, 258 So.2d 132.—*Neglig 233*.

La.App. 2 Cir. 1964. "Negligence" is want of ordinary or reasonable care, which should be exercised by person of ordinary prudence under all circumstances in view of probable danger of injury. LSA-C.C. art. 2315.—*Tucker v. Travelers Ins. Co.*, 160 So.2d 440.—*Neglig 233*.

La.App. 2 Cir. 1963. "Negligence" is failure to use the care necessary to avoid a danger which should, and could, have been anticipated by a reasonable and prudent person.—*Bryant v. Ludendi Roller Drome, Inc.*, 150 So.2d 55.—*Neglig 213*.

La.App. 2 Cir. 1950. "Negligence" consists in failure to provide against the ordinary occurrences of life and insufficiency of provision made as against an event such as may happen once in a lifetime or twice in a century does not constitute actionable negligence.—*Landry v. News-Star-World Pub. Corp.*, 46 So.2d 140.—*Neglig 213*.

La.App. 2 Cir. 1948. "Negligence" is the failure to use such care as is necessary to avoid a danger which should have been anticipated by reason of which the plaintiff suffered injury, though a defendant can only be required to guard against a probable or anticipated danger.—*Anderson v. London Guarantee & Acc. Co.*, 36 So.2d 741.—*Neglig 213, 230*.

La.App. 2 Cir. 1943. "Negligence" is the violation or disregard of some duty.—*Weadock v. Eagle Indem. Co.*, 15 So.2d 132.—*Neglig 250*.

La.App. 2 Cir. 1942. The proprietor of a theater is bound to guard against dangers that could reasonably be anticipated and averted by exercise of ordinary care, and to furnish adequate appliances for prevention of injury which might be anticipated from nature of the performance, although precise injury could not have been foreseen; however, failure to anticipate and guard against dangers which are improbable and could not be reasonably anticipated is not "negligence."—*Welcek v. Saenger Theatres Corp.*, 5 So.2d 577.—*Theaters 6(1)*.

La.App. 2 Cir. 1941. "Negligence" consists in a failure to provide against the ordinary occurrences of life, and the fact that the provision made is insufficient as against an event such as may happen once in a lifetime, or twice in a century, does not make out a case of negligence upon which an action in damages will lie.—*Riche v. Thompson*, 6 So.2d 566.—*Neglig 213*.

La.App. 2 Cir. 1941. It is not "negligence" for a bus or trolley car operator to suggest to a passenger that if passenger hurries when leaving bus or trolley he may catch another bus or trolley.—*Pugh v. City of Monroe*, 6 So.2d 83.—*Carr 303(1)*.

La.App. 2 Cir. 1940. The fact that host did not drive off pavement onto slopes on either side thereof did not amount to "negligence" such as would

render host liable to guests for injuries sustained when host's automobile collided with a second motorist's automobile while second motorist was turning around on highway at night.—*Phillips v. Henderson*, 200 So. 192.—Autos 159.

La.App. 2 Cir. 1940. Where pedestrian alleged that around 9 or 10 o'clock in morning she was walking about two feet off edge of asphalt surface along shoulder of highway with an automobile coming toward her from opposite direction, that another automobile suddenly sounded its horn behind pedestrian causing her to suddenly turn around and as she did so, she fell into an excavation about two feet from edge of asphalt made by defendant for purpose of laying pipeline, that excavation was some six feet in length and about two feet across, and that heavy rain obscured pedestrian's vision, exception of no cause or right of action was properly sustained since pedestrian's failure to see the excavation constituted "negligence" and "want of care" which were the proximate contributing cause of her injury.—*Bamburg v. Standard Oil Co. of La.*, 199 So. 411.—High 208(1).

La.App. 2 Cir. 1940. "Negligence" is a failure to observe or do something that one ought to have seen and done and would have done or noticed with ordinary care.—*Bamburg v. Standard Oil Co. of La.*, 199 So. 411.—Neglig 232.

La.App. 2 Cir. 1939. If the operator of an offending vehicle, after actual or constructive discovery of a negligent person's existing peril, could have prevented the occurrence of an accident by exercise of due diligence, but failed to do so, such failure constitutes "negligence" and is considered the "proximate and immediate cause" of the accident and resulting injury, and the injured person's negligence the "remote cause," so as to entitle him to recover, though his negligence continues to the moment of the accident.—*Browne v. Texas & P.R. Co.*, 193 So. 511.—Neglig 530(1).

La.App. 2 Cir. 1939. Where fireman on freight train traveling about 40 miles an hour saw pedestrian about 100 feet away from locomotive and about two steps away from tracks and moving toward tracks with his back toward locomotive, but fireman failed to sound whistle, fireman's failure to do so was "negligence" which was the "proximate cause" of pedestrian's death, and pedestrian's negligence was merely the "remote cause," so as to authorize recovery from railroad for pedestrian's death under the "last clear chance doctrine" or "discovered peril doctrine." Act No. 12 of 1924, § 1 (LSA-R.S. 45:561).—*Browne v. Texas & P.R. Co.*, 193 So. 511.—R R 338.5.

La.App. 2 Cir. 1939. The alleged acceleration of speed of truck with worn tires down grade on slippery pavement in rain constituted "negligence."—*Cosse v. Henley*, 193 So. 206.—Autos 168(3).

La.App. 2 Cir. 1939. If truck driver put motor in neutral in order to coast down hill on slippery pavement during rain, such action constituted "negligence." Act No. 286 of 1938, § 3, rule 16(b).—*Cosse v. Henley*, 193 So. 206.—Autos 168(3).

La.App. 2 Cir. 1939. If defendant, after actual or constructive discovery of existing peril, could have prevented occurrence of an accident by exercise of due diligence and fails to do so, such failure constitutes "negligence" and is considered the "proximate and immediate cause" of accident and resulting injury and the plaintiff's negligence the "remote cause," and plaintiff may recover, although his negligence continues to moment of accident.—*Eggleston v. Louisiana & A. Ry. Co.*, 192 So. 774.—Neglig 530(1).

La.App. 2 Cir. 1939. "Negligence" may consist of a failure to so light the premises as to protect from injury persons rightfully therein by reason of dangerous condition which could not be reasonably discovered in the absence of such light.—*Gunn v. Saenger-Ehrlich Enterprises*, 192 So. 744.—Neglig 1085.

La.App. 2 Cir. 1939. The test of "actionable negligence" is not what could have been done to have prevented accident, but what a reasonably, prudent and careful person would have done under the circumstances, and failure to guard against a remote possibility of accident, or one which could not, in exercise of ordinary care, be foreseen, does not constitute "negligence."—*Wilson, Zurich General Acc. & Liability Ins. Co., Interveners v. National Cas. Co.*, 191 So. 574.—Neglig 213.

La.App. 2 Cir. 1938. "Negligence" is not synonymous with "fraud" or "dishonesty."—*Anders v. J. L. Evans & Co.*, 187 So. 109.—Fraud 1; Neglig 200.

La.App. 2 Cir. 1938. Although momentary forgetfulness of, or inattention to, a known danger may amount to "negligence," the person who has exercised care which an ordinarily prudent person would have exercised under similar circumstances is not negligent merely because he temporarily forgot or was inattentive to a known danger.—*Gustine v. Big Chain Stores*, 180 So. 852.—Neglig 506(3).

La.App. 2 Cir. 1938. To excuse forgetfulness of, or inattention to, a known danger, some fact, condition, or circumstance must exist which would divert the mind or attention of an ordinarily prudent person, and a mere lapse of memory is insufficient, but if under similar circumstances an ordinarily prudent person would not have forgotten the danger, such conduct constitutes "negligence."—*Gustine v. Big Chain Stores*, 180 So. 852.—Neglig 506(3).

La.App. 2 Cir. 1932. Violation of law, such as that requiring motorists to go beyond center of intersection before making left turn, constitutes "negligence." Act No. 296 of 1928, § 18; Act No. 2 of 1929, Ex. Sess.—*Abel v. Gulf Refining Co.*, 138 So. 708, set aside on rehearing 143 So. 82.—Autos 171(2).

La.App. 3 Cir. 1994. "Negligence" is conduct which falls below standard established by law for protection of others against unreasonable risk of harm. LSA-C.C. art. 2315.—*Frelow v. St. Paul Fire & Marine Ins. Co.*, 631 So.2d 632, 1993-759 (La. App. 3 Cir. 2/2/94).—Neglig 233.

La.App. 3 Cir. 1993. Generally, "negligence" is defined as conduct which falls below standard established by law for protection of others against unreasonable risk of harm.—*Crooks v. National Union Fire Ins. Co.*, 620 So.2d 421, writ denied 629 So.2d 391, writ denied 629 So.2d 392.—Neglig 233.

La.App. 3 Cir. 1979. "Negligence" is conduct which creates unreasonable risk of foreseeable harm to others; negligence is determined by existence of risk or hazard and by violation of duty to protect certain individuals from such risk.—*Williams v. City of Alexandria*, 376 So.2d 367, writ denied 378 So.2d 432.—Neglig 202.

La.App. 3 Cir. 1973. "Negligence" is the failure to exercise ordinary or reasonable care which would be exercised by a person of ordinary prudence under all the circumstances in view of the probability of danger of injury, or is the creation of an unreasonable risk of harm to others.—*Cooksey v. Central Louisiana Elec. Co., Inc.*, 279 So.2d 242.—Neglig 233.

La.App. 3 Cir. 1972. "Negligence" is a failure to observe or do something that one ought to have observed and done and would have done or noticed with ordinary care.—*Siau v. Rapides Parish School Bd.*, 264 So.2d 372, writ denied 266 So.2d 440, 262 La. 1148.—Neglig 232.

La.App. 3 Cir. 1970. "Negligence" is conduct which creates unreasonable risk of foreseeable harm to others.—*Helminger v. Cook Paint & Varnish Co.*, 230 So.2d 623.—Neglig 233.

La.App. 3 Cir. 1968. "Negligence" is the breach of the duty to protect against an unreasonable risk of foreseeable harm to others, and a factor in determining the reasonableness of the risk is whether the magnitude of the risk created outweighs the utility or social value of the conduct creating it.—*Taylor v. National Indem. Co.*, 215 So.2d 203.—Neglig 233.

La.App. 3 Cir. 1965. "Negligence" is conduct which creates unreasonable risk of foreseeable harm to others.—*Goff v. Carlino*, 181 So.2d 426, writ refused 183 So.2d 653, 248 La. 1033.—Neglig 233.

La.App. 3 Cir. 1965. "Negligence" is conduct which creates an undue risk of foreseeable harm to others.—*Dartez v. City of Sulphur*, 179 So.2d 482.—Neglig 231.

La.App. 3 Cir. 1965. Conduct which creates undue risk of harm or injury to others or failure to use such care as is necessary to avoid a danger which could and should have been anticipated constitutes "negligence."—*Fontana v. State Farm Mut. Auto. Ins. Co.*, 173 So.2d 284, writ denied 175 So.2d 644, 247 La. 1027.—Neglig 231.

La.App. 3 Cir. 1964. "Negligence" is conduct which creates an unreasonable risk of harm or injury to others, or the failure to use such care as is necessary to avoid danger which should and could have been anticipated.—*Vidrine v. General Fire & Cas. Co.*, 168 So.2d 449.—Neglig 233.

La.App. 3 Cir. 1964. "Negligence" is conduct which creates undue risk of harm or injury to others, and failure to use such care as is necessary to avoid danger which should and could have been anticipated.—*Roy v. United Gas Corp.*, 163 So.2d 587, writ refused 165 So.2d 485, 246 La. 593.—Neglig 231.

La.App. 3 Cir. 1963. "Negligence" is conduct creating unreasonable risk of harm to another.—*Sloan v. Flack*, 150 So.2d 646.—Neglig 233.

La.App. 3 Cir. 1962. "Negligence" is conduct which creates undue risk of harm or injury to others, and is failure to use such care as is necessary to avoid danger which should and could have been anticipated.—*Larned v. Wallace*, 146 So.2d 434.—Neglig 231.

La.App. 4 Cir. 1996. "Negligence" is conduct which falls below standard established by law for protection of others against unreasonable risk of harm.—*Warren v. Campagna*, 686 So.2d 969, 1996-0834 (La.App. 4 Cir. 12/27/96).—Neglig 233.

La.App. 4 Cir. 1992. "Negligence" is defined as conduct which falls below standard established by law for protection of others against unreasonable risk of harm.—*Dominici v. Wal-Mart Stores, Inc.*, 606 So.2d 555.—Neglig 233.

La.App. 4 Cir. 1970. Basically, "negligence" resulting in liability in tort, and "contributory negligence" in tort cases, is breach of a legal duty owed by a litigant to an opposing litigant.—*Illinois Cent. R. Co. v. Cullen*, 235 So.2d 154, writ denied 239 So.2d 172, 256 La. 789.—Neglig 250, 502(2).

La.App. 4 Cir. 1964. If defendant, after actual or constructive discovery of existing peril, could have prevented occurrence of accident by due diligence and fails to do so, such failure constitutes "negligence" and is considered "proximate and immediate cause" of accident and resulting injury and plaintiff's negligence "remote cause" and plaintiff may recover, though his negligence continues to moment of accident.—*Fireman's Mut. Ins. Co. v. S. Jacobs Co.*, 162 So.2d 816.—Neglig 530(1).

La.App. 5 Cir. 1996. "Negligence" is conduct which falls below standard established by law for protection of others against unreasonable risk of harm; it is breach of duty, statutory or nonstatutory, owed to another to protect that person from particular harm that ensued.—*Jefferson Parish Clerk of Court Health Ins. Trust Fund Through Mouldoux v. Fidelity and Deposit Co. of Maryland*, 673 So.2d 1238, 95-951, 95-954, 95-953, 95-952, 95-955, 95-956, 95-957 (La.App. 5 Cir, rehearing denied, writ denied 679 So.2d 1390, 1996-1719 (La. 10/4/96).—Neglig 202.

La.App.Orleans 1942. "Negligence" is the failure to use such care as necessary to avoid a danger which should have been anticipated and consists in a failure to provide against the ordinary occurrences of life, and the fact that the provision made is insufficient as against an event such as may happen once in a lifetime, or perhaps twice in a century does not make out a case of negligence.—*Cassanova v. Paramount-Richards Theatres*, 11

So.2d 238, annulled 16 So.2d 444, 204 La. 813.—Neglig 213.

La.App.Orleans 1942. The backing of an automobile is not necessarily "negligence".—*Le Blanc v. Jordy*, 10 So.2d 64.—Autos 169.

La.App.Orleans 1942. One driving automobile slowly in anticipation of making right turn into driveway was guilty of "negligence", contributing to collision between automobile and another automobile approaching from rear, in stopping near neutral ground on her left, failing to give notice by hand signal of her intention to stop or reduce speed of automobile, as required by city ordinance, and attempting to turn into driveway from opposite of street.—*Weitkam v. Johnston*, 5 So.2d 582, rehearing denied 6 So.2d 54.—Autos 209.

La.App.Orleans 1941. "Negligence" is the failure to use such care as is necessary to avoid a danger which should have been anticipated, by reason of which plaintiff has suffered injury.—*O'Neill v. Hemenway*, 3 So.2d 210.—Neglig 213.

La.App.Orleans 1935. Failure to do that which cannot physically be done is not "negligence".—*Heath v. Suburban Bldg. & Loan Ass'n*, 163 So. 546.—Neglig 200.

La.App.Orleans 1934. "Negligence" is relative term, and the degree of care required of a sportsman using a firearm must be commensurate with the dangers to be avoided.—*Fowler v. Monteleone*, 153 So. 490.

La.App.Orleans 1932. Violation of ordinance forbidding persons under sixteen to operate automobiles is in itself "negligence".—*Millannos v. Fatter*, 138 So. 878, 18 La.App. 708.—Autos 157.

La.App.Orleans 1931. "Negligence" is the failure to use such care as is necessary to avoid a danger which should and could have been anticipated.—*Brandt v. New Orleans Public Service*, 132 So. 244, 15 La.App. 391.

La.App.Orleans 1921. "Negligence" is failure to use necessary care to avoid danger which could have been anticipated.—*Caillier v. New Orleans Ry. & Light Co.*, 120 So. 76, 11 La.App. 93.—Neglig 230.

Me. 1973. At common law, "negligence" is defined as a breach of a duty owed to a foreseeable plaintiff to exercise reasonable care for plaintiff's safety.—*Wing v. Morse*, 300 A.2d 491.—Neglig 250.

Me. 1955. "Negligence" consists in failure to provide against ordinary occurrences of life.—*Michalka v. Great Northern Paper Co.*, 116 A.2d 139, 151 Me. 98.—Neglig 232.

Me. 1947. "Negligence" is the failure, in the opinion of a jury, to act as would the usual and prudent man of ordinary intelligence.—*Kennebec Towage Co. v. State*, 52 A.2d 166, 142 Me. 327.—Neglig 232.

Me. 1943. While it is duty of parties to action and their attorneys to look after their cases and ascertain what steps are taken in their disposition,

and attorney receiving assurance from court that he will receive notice to enable him to protect his rights is not chargeable with "negligence" in relying on such assurance.—*Enoch C. Richards Co. v. Libby*, 33 A.2d 537, 140 Me. 38.—Pretrial Proc 596.

Me. 1939. In automobile accident case, if on a rational weighing of contradictory evidence defendant was guilty of a want of that care which would have been exercised by a man of ordinary care and prudence, under the circumstances, defendant was guilty of "negligence".—*Arnst v. Estes*, 8 A.2d 201, 136 Me. 272.—Autos 146; High 172.

Me. 1939. The standard of "negligence" is that of reasonable care.—*Arnst v. Estes*, 8 A.2d 201, 136 Me. 272.—Neglig 233.

Me. 1936. "Negligence" is a failure to use the requisite degree of care in the particular circumstances.—*Foley v. H.F. Farnham Co.*, 188 A. 708, 135 Me. 29.—Neglig 230.

Me. 1934. "Negligence" is the want of ordinary care, that is, the want of such care as a reasonably prudent and careful man, mindful of his own conduct and the rights and safety of others, would exercise in a similar situation, or under like circumstances.—*McCarthy v. Mason*, 171 A. 256, 132 Me. 347.

Me. 1933. "Negligence" is want of ordinary care or omission to do something which prudent and reasonable man, led by those considerations which ordinarily regulate human affairs, would do, or doing something which such man would not do.—*Field v. Webber*, 169 A. 732, 132 Me. 236.

Me. 1932. "Negligence" is want of "ordinary care," which is such care as reasonably prudent and careful man, mindful of his own conduct and others' rights and safety, would exercise in similar situation.—*Gravel v. Le Blanc*, 162 A. 789, 131 Me. 325.—Neglig 232.

Me. 1932. *Res ipsa loquitur* doctrine does not dispense with rule that person alleging "negligence" must prove it, but is mode of proving defendant's negligence inferentially. "Negligence," without qualification and in its ordinary sense, is the failure of a responsible person, either by omission or by action, to exercise that degree of care, vigilance, and forethought which, in the discharge of the duty then resting on him, the person of ordinary caution and prudence ought to exercise under the particular circumstances; it is a want of diligence commensurate with the requirement of the duty at the moment imposed by the law.—*Winslow v. Tibbetts*, 162 A. 785, 131 Me. 318.

Me. 1929. Servant in action against employer not assenting to compensation act for injuries to eye from spark could recover only on basis of "negligence," which is failure of duty.—*Millett v. Maine Cent. R. Co.*, 146 A. 903, 128 Me. 314.—Work Comp 2119.

Me. 1925. Liability of employer for injury of employee under common law as aided by state Workmen's Compensation Act and federal Employers' Liability Act, 45 U.S.C.A. §§ 51-59, is predicated

ed on negligence to be proved by plaintiff, together with his resulting injury, and "negligence" in an action under federal enactment means such acts of commission or omission as would by rule of common law be sufficient to take case to jury.—*Hatch v. Portland Terminal Co.*, 131 A. 5, 125 Me. 96.—*Emp Liab 2*.

Me. 1921. "Negligence" is a relative expression, and may lie in the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances, or in doing what such a person under the circumstances would not have done, being the lack of ordinary care, taking into account the surrounding state of affairs.—*Hutchins v. Penobscot*, 113 A. 618, 120 Me. 281.

Me. 1918. "Negligence" is the unintentional failure to perform a duty implied by law and is the opposite of due care.—*Avery v. Thompson*, 103 A. 4, 117 Me. 120, *Am. Ann. Cas.* 1918E, 1122, *L.R.A.* 1918D, 205.

Me. 1909. "Negligence" is the want of that care which ordinarily prudent men use in the same circumstances, and as even ordinarily prudent men, when caught in a trap where they must act instantly, miscalculate and misjudge, that one caught in a passage near a railroad with a frightened team mistakenly concluded that the safest course would be to try to cross the track, and so came nearer to the track than he otherwise would, would not necessarily be negligence.—*Moore v. Maine Cent. R. Co.*, 76 A. 871, 106 Me. 297.

Me. 1906. "Fault," in legal literature, is the equivalent of "negligence," and it is so used in a statute giving an action for damage to person or property by a dog where the damage was not occasioned through "fault" of the person injured.—*Garland v. Hewes*, 64 A. 914, 101 Me. 549.

Me. 1905. The measure of legal duty is usually expressed positively, by stating what constitutes due care, rather than negatively, by stating what constitutes "negligence," which is the unintentional failure to perform the duty imposed by law.—*Raymond v. Portland R. Co.*, 62 A. 602, 100 Me. 529, 3 *L.R.A.N.S.* 94.

Me. 1905. One is not guilty of "negligence" by reason of an act or omission which would not lead an ordinarily prudent man, giving the matter thought, to apprehend danger from it.—*Cowett v. American Woolen Co.*, 60 A. 703, 100 Me. 65.

Md. 1985. Although failure to read or follow instructions or warnings involves conduct that may be considered "negligence," "contributory negligence" is not involved; the conduct is instead relevant to consideration of defectiveness of the product, or assumption of risk by plaintiff, or both.—*Ellsworth v. Sherne Lingerie, Inc.*, 495 A.2d 348, 303 Md. 581, 52 *A.L.R.4th* 247.—*Prod Liab 8, 27*.

Md. 1978. Corporate claimants' president's failure to make inquiry into affairs of claimants was not "negligence" barring claimants from obtaining reimbursement from Clients' Security Trust Fund of the Bar of State for an attorney's defalcations.

Maryland Rules, Rule 1228 i 3, i 3(vii).—*Folly Farms I, Inc. v. Trustees of Clients' Sec. Trust Fund of Bar of Maryland*, 387 A.2d 248, 282 Md. 659.—*Atty & C 129.5*.

Md. 1974. Within statute providing that any person who by his negligence substantially contributes to material alteration of instrument or the making of an unauthorized signature is precluded from asserting alteration or lack of authority against holder in due course or one who pays instrument in good faith in accordance with reasonable commercial standards, "negligence" means failure to exercise ordinary care. Code 1957, art. 95B, § 3-406.—*Dominion Const., Inc. v. First Nat. Bank of Maryland*, 315 A.2d 69, 271 Md. 154.—*Banks 148(3); Bills & N 365(1)*.

Md. 1968. "Negligence" is the lack of ordinary care under all the circumstances.—*Paramount Development Corp. v. Hunter*, 238 A.2d 869, 249 Md. 188.—*Neglig 232*.

Md. 1965. "Wilful violation", as statutory ground for revocation of insurance agent's license, means intentional act of omission or commission; "wilfulness" and "negligence" are not synonymous. Code 1957, art. 48, § 111.—*Nuger v. State Ins. Commissioner*, 207 A.2d 619, 238 Md. 55.—*Insurance 1618*.

Md. 1954. A "nuisance" exists because of violation of an absolute duty and does not rest upon degree of care used but rather on degree of danger existing with best of care, but "negligence" results from violation of relative duty for failure to use degree of care required under particular circumstances.—*Sherwood Bros. v. Eckard*, 105 A.2d 207, 204 Md. 485.—*Neglig 230; Nuis 1*.

Md. 1946. "Negligence" necessarily involves breach of some duty owed by defendant to plaintiff, and can have no existence apart from duty expressly or impliedly imposed.—*East Coast Freight Lines v. Consolidated Gas, Elec. Light & Power Co. of Baltimore*, 50 A.2d 246, 187 Md. 385.—*Neglig 210*.

Md. 1941. For a driver to enter a favored boulevard without stopping, or to stop but enter the favored highway before yielding right of way to vehicles thereon, is "negligence," because motorist upon the boulevard is not required to slow down at intersections. Code 1939, art. 56, § 235.—*Madge v. Fabrizio*, 20 A.2d 172, 179 Md. 517.—*Autos 208*.

Md. 1940. An attempt to discharge a high moral duty cannot be termed "negligence" unless actor's conduct exhibits such a reckless indifference to danger as to amount to rashness entailing almost certain injury.—*Peoples Drug Stores v. Windham*, 12 A.2d 532, 178 Md. 172.—*Neglig 274*.

Md. 1939. "Negligence" is not an abstraction, but connotes actual conduct and definite, concrete facts, and is essentially relative and predicated on concept that existence of given facts imposes on person duty of so acting in respect thereto as not to inflict on another injury avoidable by exercise of degree of care and prudence which men of ordinary judgment and prudence may reasonably be expected to exercise in their own affairs under like condi-

tions.—State, for Use of *Chenoweth v. Baltimore Contracting Co.*, 6 A.2d 625, 177 Md. 1.—Neglig 232.

Md. 1939. To have right of action in "negligence," there must have been duty owing plaintiff by defendant to observe care prescribed by law in given circumstances, breach of such duty by defendant, and damages and injury to plaintiff as demonstrable effect of such breach.—State, for Use of *Chenoweth v. Baltimore Contracting Co.*, 6 A.2d 625, 177 Md. 1.—Neglig 202.

Md. 1938. "Negligence" is a relative term and usually signifies the doing or failing to do what a reasonably prudent man under similar circumstances would have done.—*Vickers v. Starcher*, 2 A.2d 678, 175 Md. 522.—Neglig 233.

Md. 1938. "Negligence" is any conduct, except conduct recklessly disregardful of an interest of others, which falls below the standard established by law for protection of others against unreasonable risk of harm.—*Holler v. Lowery*, 200 A. 353, 175 Md. 149.—Neglig 233.

Md. 1938. "Negligence" does not exist apart from the facts and circumstances upon which it is predicated, necessarily involves the breach of some duty owed by defendant to plaintiff, and is inconsistent with the 'exercise of ordinary care.'—*Holler v. Lowery*, 200 A. 353, 175 Md. 149.—Neglig 232, 250.

Md. 1934. Instruction defining "negligence" as "lack of ordinary care," and "ordinary care" as degree of caution, attention, activity, and skill reasonably to be expected under circumstances, held not erroneous as putting "ordinary care" on too high a level because of word "skill."—*Yellow Cab Co. v. Lacy*, 170 A. 190, 165 Md. 588.—Autos 246(2.1).

Md. 1932. "Negligence" is doing of, or failure to do, some act, which ordinarily prudent man would not do, or do, resulting in injury.—*Minch v. Hilkowitz*, 161 A. 164, 162 Md. 649.—Neglig 232.

Md. 1928. "Negligence" is failure to exercise care which circumstances reasonably require.—*State v. Eastern Shore Gas & Elec. Co. of Maryland*, 142 A. 503, 155 Md. 660.—Neglig 230.

Md. 1917. The word "negligence," not being defined in federal Employers' Liability Act, 45 U.S.C.A. § 51 et seq. must be taken to mean such act of commission or omission as would at common law have been sufficient to entitle action thereunder to be submitted to jury.—*Western Maryland Ry. Co. v. Sanner*, 101 A. 587, 130 Md. 581, certiorari denied 38 S.Ct. 61, 245 U.S. 661, 62 L.Ed. 536.—Emp Liab 3.

Md. 1910. "Negligence" is the omission of the care that ordinarily prudent men will exercise under similar circumstances.—*Heinz v. Baltimore & O.R. Co.*, 77 A. 980, 113 Md. 582.

Md. 1910. To constitute a good cause of action for injuries through "negligence," there should be stated a right on plaintiff's part, a duty on defendant's part, respecting such right, and a breach of such duty resulting in plaintiff's injury.—*City of*

Havre de Grace v. Fletcher, 77 A. 114, 112 Md. 562.

Md. 1909. In an action for injuries to a servant, the burden is on plaintiff to establish defendant's "negligence," viz., failure to discharge its legal duties toward him.—*Smith v. Philadelphia, B. & W.R. Co.*, 73 A. 818, 111 Md. 274.

Md. 1907. "Negligence" is essentially relative and comparative, not absolute. It is not even an object of simple apprehension, apart from the circumstances out of which it grows. As these circumstances necessarily vary in their relations to each other, under different surroundings, they inevitably change their original signification and import. Hence it is intrinsically true that those things which would not, under one condition, constitute negligence would, on the other hand, under a different though not necessarily an opposite, condition, most unequivocally indicate its existence.—*Mattingly v. Montgomery*, 68 A. 205, 106 Md. 461.

Md. 1907. "Negligence" is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such a person, under the existing circumstances would not have done.—*Geiselman v. Schmidt*, 68 A. 202, 106 Md. 580.

Md. 1906. "Negligence" can neither be affirmed nor denied until the conditions under which the act was performed are known. Negligence primary and contributory is essentially relative and comparative and not absolute.—*State v. Trimble*, 64 A. 1026, 104 Md. 317.

Md. 1905. The degree of care required by a carrier of passengers and the precise duty which it owes to them is clearly defined in the law. The carrier owes to the passenger the exercise of the utmost care and diligence which human foresight can use, though not an insurer of the safety of the passenger. A breach of that duty is "negligence," and if any injury results therefrom, and is the consequence thereof, an action will lie at the suit of the person thus injured. It is the breach of the duty which is owed that constitutes the cause of action.—*Philadelphia, B. & W.R. Co. v. Allen*, 62 A. 245, 102 Md. 110.

Md. 1903. There can be no "negligence" where there is no duty to use care, for negligence is the breach of some duty that one person owes to another, and consequently it is a relative term, and varies with the circumstances of each particular case.—*West Virginia Cent. & P. Ry. Co. v. State*, 54 A. 669, 96 Md. 652, 61 L.R.A. 574.

Md. 1893. "Negligence" and "incompetency" are not convertible terms, for the most competent may sometimes be negligent, and evidence of acts of former incompetency furnishes no legitimate ground of presumption that a party was negligent on the occasion of subsequent injury.—*City of Baltimore v. War*, 27 A. 85, 77 Md. 593.

Md.App. 1996. "Negligence" is failure to use reasonable care under circumstances.—*Williams v. Prince George's County*, 685 A.2d 884, 112 Md. App. 526.—Neglig 233.

Md.App. 1972. "Negligence" is the doing of something that a person of ordinary prudence would not do, or the failure to do something that a person of ordinary prudence would do, under the circumstances.—*Owens v. Creaser*, 288 A.2d 394, 14 Md.App. 593, certiorari granted 265 Md. 736, reversed 297 A.2d 235, 267 Md. 238.—Neglig 232.

Mass. 1997. Action brought to recover costs of responding to release of hazardous materials is properly viewed as action for contribution among joint tortfeasors, rather than action in tort against joint tortfeasors, such that cost incurrer is not relieved of all responsibility for response costs; "negligence," within meaning of pre-1972 language of governing statute, providing that persons whose negligence results in releases of hazardous materials are liable for their pro rata share of response costs, should be understood to mean "liable." M.G.L.A. c. 21E, § 4.—*Martignetti v. Haigh-Farr Inc.*, 680 N.E.2d 1131, 425 Mass. 294.—*Environ Law* 445(1).

Mass. 1993. Wanton or reckless conduct is not form of "negligence."—*Com. v. Twitchell*, 617 N.E.2d 609, 416 Mass. 114.—*Crim Law* 20, 23.

Mass. 1967. "Negligence" in its ordinary sense is failure of responsible person, either by omission or by action, to exercise that degree of care, vigilance, and forethought which, in discharge of duty then resting on him, the person of ordinary caution and prudence ought to exercise under particular circumstances.—*Beaver v. Costin*, 227 N.E.2d 344, 352 Mass. 624.—Neglig 232.

Mass. 1959. "Negligence" in its ordinary sense is the failure of a responsible person, either by omission or by action, to exercise that degree of care, vigilance and forethought which, in the discharge of duty then resting upon him, the person of ordinary caution and prudence ought to exercise under the circumstances.—*Carroll v. Bouley*, 156 N.E.2d 687, 338 Mass. 625.—Neglig 202.

Mass. 1958. Right of a gratuitous guest passenger to recover against driver of a motor vehicle requires proof that the driver was guilty of "gross negligence" at the time of the accident, and such "negligence" is the omission of even such diligence as habitually inattentive and careless men do not fail to exercise in avoiding danger to their own person or property.—*Pruzynski v. Malinowski*, 153 N.E.2d 640, 338 Mass. 58.—*Autos* 181(1).

Mass. 1945. Breach of duty owed to a person constitutes "negligence" toward such person, even though it does not create liability for particular damage because not a cause thereof.—*Quinby v. Boston & M.R.R.*, 61 N.E.2d 853, 318 Mass. 438, 160 A.L.R. 724.—Neglig 250.

Mass. 1944. "Wanton" and "reckless" are not merely rhetorical or vituperative substitutes for "negligent" or "grossly negligent", but they express a difference in the degree of risk and in the voluntary taking of risk so marked, as compared with "negligence" as to amount to a difference in kind.—*Com. v. Welansky*, 55 N.E.2d 902, 316 Mass. 383.—*Crim Law* 23.

Mass. 1944. In pleadings, as well as in statutes, the rule is that "negligence" and "wilful and wanton conduct" are so different that words properly descriptive of the one exclude the other.—*Com. v. Welansky*, 55 N.E.2d 902, 316 Mass. 383.—*Plead* 34(1); *Statut* 199.

Mass. 1942. Driving of automobile at speed of about 40 miles an hour in country district along straight road on clear dark night was not, as matter of law, "negligence" barring driver's recovery of damages for injuries sustained in collision with rear of automobile standing on highway without lighted tail light.—*Bresnahan v. Proman*, 43 N.E.2d 336, 312 Mass. 97.—*Autos* 245(78).

Mass. 1942. Unless unsafe condition of sidewalk in front of defendant's house resulted from a wrongful act or omission of defendant, it had no duty, breach of which would constitute "negligence", to keep the sidewalk in a reasonably safe condition for use of travelers.—*Faroloto v. Springfield Five Cents Sav. Bank*, 39 N.E.2d 948, 310 Mass. 806.—*Mun Corp* 808(1).

Mass. 1941. In determining whether defendant was guilty of "negligence", his conduct is to be judged by whether a reasonable man, knowing as much of the circumstances surrounding defendant at time of accident as defendant knew or should have known, would have realized that his conduct, at that time, involved an unreasonable risk of harm to others.—*Gagnon v. Divittorio*, 38 N.E.2d 629, 310 Mass. 475.—Neglig 233.

Mass. 1941. Some degree of jerking, jolting, and lurching being declared a necessary incident to travel, evidence of a jerk, jolt, or lurching in operation of a street car does not warrant a finding of "negligence" notwithstanding injury results, unless it appears to be unusual and beyond common experience.—*Carson v. Boston Elevated Ry.*, 33 N.E.2d 701, 309 Mass. 32.—*Carr* 318(4).

Mass. 1940. "Negligence" can exist only where there is a duty to be careful.—*Therault v. Pierce*, 30 N.E.2d 682, 307 Mass. 532.—Neglig 210.

Mass. 1940. A breach of duty to keep premises reasonably safe, which dog club conducting dog show owed exhibitor, would not constitute "negligence" unless injury sustained when exhibitor was bitten by another dog was in its general nature a probable consequence of some act or omission for which dog club was responsible.—*Splaine v. Eastern Dog Club*, 28 N.E.2d 450, 306 Mass. 381, 129 A.L.R. 427.—*Anim* 68.

Mass. 1940. The Supreme Judicial Court would not construe "negligence," as used in the death statute, as not including a case where all elements of duty and careless failure to perform it would be present, if it were not that relation of parent and minor child would have interposed a bar against bringing of an action by plaintiff's intestate, if intestate had lived. M.G.L.A. c. 229, § 5.—*Oliveria v. Oliveria*, 25 N.E.2d 766, 305 Mass. 297.—*Death* 15.

Mass. 1940. Wrongs caused by 'wantonness' and 'recklessness' are distinguished from torts arising from "negligence" by complete indifference to con-

sequences.—Cohen v. Davies, 25 N.E.2d 223, 305 Mass. 152, 129 A.L.R. 735.—Neglig 275.

Mass. 1938. An employer is not guilty of “negligence” if that which occurs is something not reasonably to be anticipated by the employer.—Bigos v. United Rayon Mill, 16 N.E.2d 44, 301 Mass. 76.—Emp Liab 30.

Mass. 1937. “Negligence” may consist in a failure to guard against wrongful and even criminal acts of third persons.—Bellows v. Worcester Storage Co., 7 N.E.2d 588, 297 Mass. 188.—Neglig 255.

Mass. 1936. Where a laborer is seen on railroad track by trainmen and there is reason to believe that he will not get off, laborer cannot be lawfully run down without warning, and wanton misconduct in running him down is “negligence” under Federal Employers’ Liability Act (Federal Employers’ Liability Act, 45 U.S.C.A. § 51 et seq.).—Hietala v. Boston & A.R.R., 3 N.E.2d 377, 295 Mass. 186, certiorari denied Boston & A R Co v. Hietala, 57 S.Ct. 116, 299 U.S. 589, 81 L.Ed. 434.—Emp Liab 73.

Mass. 1935. “Negligence” and “willful and wanton conduct” are so different in kind that words descriptive of one commonly exclude the other, and a plaintiff cannot recover for willful and wanton conduct on a count which alleges only negligence.—Miller v. U. S. Fidelity & Cas. Co., 197 N.E. 75, 291 Mass. 445.—Neglig 1540.

Mass. 1934. In injured employee’s action against employer not insured under compensation act, only defense open to defendant was that his “negligence” did not cause plaintiff’s injuries, “negligence” meaning failure to discharge obligation or to fulfill duty owed by defendant to plaintiff. G.L.(Ter.Ed.) c. 152, § 66 (M.G.L.A.).—Cronan v. Armitage, 190 N.E. 12, 285 Mass. 520.—Work Comp 2119.

Mass. 1933. “Negligence” of doctor when treating patient consists of his failure to conform to standard of care which the law sets for members of medical profession.—Semerjian v. Stetson, 187 N.E. 829, 284 Mass. 510.—Health 623.

Mass. 1931. “Negligence” is violating legal duty by doing or omitting some act.—Karlowski v. Kisko, 175 N.E. 500, 275 Mass. 180.

Mass. 1928. Within death act, operating illegally registered automobile on highway is “negligence” (M.G.L.A. c. 229, § 5, as amended by St.1922, c. 439).—Di Franco v. West Boston Gas Co., 160 N.E. 326, 262 Mass. 387.—Death 14(1).

Mass. 1925. “Negligence” and serious “willful misconduct” are different in kind, latter involving conduct of quasi criminal nature, intentional doing of something either with knowledge that it is likely to result in serious injury or with wanton and reckless disregard of probable consequences.—Durgin’s Case, 146 N.E. 694, 251 Mass. 427.—Work Comp 939.

Mass. 1919. “Negligence,” without qualification, is failure of responsible person, by omission or action, to exercise degree of care which, in dis-

charge of duty, person of ordinary caution should exercise. “Gross negligence” is substantially higher in magnitude than simple inadvertence, but falling short of intentional wrong.—Altman v. Aronson, 121 N.E. 505, 231 Mass. 588, 4 A.L.R. 1185.—Neglig 273.

Mass. 1885. The difference between “intent” and “negligence,” in a legal sense, is ordinarily nothing but the difference in the probability, under the circumstances known to the actor, and according to common experience, that a certain consequence or class of consequences will follow from a certain act.—White v. Duggan, 2 N.E. 110, 140 Mass. 18, 54 Am.Rep. 437.

Mass.App.Ct. 2002. “Negligence” is the failure of a responsible person, either by omission or by action, to exercise that degree of care, vigilance, and forethought which, in the discharge of the duty then resting on him, the person of ordinary caution and prudence ought to exercise under the particular circumstances; it is a want of diligence commensurate with the requirement of the duty at the moment imposed by the law.—Nelson v. Massachusetts Port Authority, 771 N.E.2d 209, 55 Mass.App.Ct. 433, review denied 774 N.E.2d 1099, 437 Mass. 1109.—Neglig 230, 232.

Mass.App.Ct. 1986. “Negligence” is failure to exercise that degree of care which reasonable person would exercise under the circumstances.—Morgan v. Lalumiere, 493 N.E.2d 206, 22 Mass.App.Ct. 262, review denied 497 N.E.2d 1096, 398 Mass. 1103.—Neglig 233.

Mass.App.Ct. 1985. Failure of trial judge, in negligence action brought by elderly woman who fell and hurt herself on a carpeted step in a restaurant, to instruct jury that “negligence” is the failure to exercise that degree of care which is reasonable in the circumstances, may have led jurors to believe that negligence is an inflexible concept and not dependent on such risk factors as customer use of the premises and characteristics of the patrons, requiring reversal of judgment for restaurant owner.—O’Leary v. Jacob Miller Co., 473 N.E.2d 200, 19 Mass.App.Ct. 947.—App & E 1067; Trial 251(8).

Mich. 1977. “Negligence” is conduct involving an unreasonable risk of harm.—Moning v. Alfano, 254 N.W.2d 759, 400 Mich. 425.—Neglig 233.

Mich. 1958. “Negligence” is conduct that fails to measure up to an acceptable standard.—McKinney v. Yelavich, 90 N.W.2d 883, 352 Mich. 687.—Neglig 230.

Mich. 1952. “Negligence” consists in failure to exercise due care.—Denny v. Garavaglia, 52 N.W.2d 521, 333 Mich. 317.—Neglig 231.

Mich. 1948. Statute imposing liability on the owner of an automobile for “negligence” of persons operating the automobile with owner’s consent, imputes only ordinary negligence and not gross negligence, though the driver may be guilty of gross negligence. Comp.Laws 1929, § 4648.—Geib v. Slater, 31 N.W.2d 65, 320 Mich. 316.—Autos 192(1).

Mich. 1944. "Negligence" is the absence or want of care under circumstances but a higher degree of care is required in dealing with a dangerous agency than in ordinary affairs which involve little or no risk.—*Young v. Lee*, 16 N.W.2d 659, 310 Mich. 42.—Neglig 230, 305.

Mich. 1942. Before conduct can constitute actionable "negligence" such conduct must be contrary to what a reasonable and prudent man would have done under like circumstances, and that conduct must be found to be the proximate cause of the injury.—*Roberts v. Lundy*, 4 N.W.2d 74, 301 Mich. 726.—Neglig 233, 372.

Mich. 1942. Where the driver left the key in the ignition switch of an automobile occupied by three adults and a boy and the boy released the brakes, turned on the switch and started car in reverse injuring plaintiff, the driver's conduct in leaving the key in the ignition switch did not constitute actionable "negligence".—*Roberts v. Lundy*, 4 N.W.2d 74, 301 Mich. 726.—Autos 173(8).

Mich. 1942. "Negligence" is a failure to perform a duty to person injured because of such failure.—*Colvaruso v. Stroh Brewery Co.*, 3 N.W.2d 261, 301 Mich. 245.—Neglig 250.

Mich. 1942. The backing of automobile on highway is not "negligence", but motorist must exercise ordinary care not to injure others, and must determine whether others are in vicinity who may be injured, and must look backward at beginning of operation and must continue to look backward.—*In re Miller's Estate*, 2 N.W.2d 888, 300 Mich. 703.—Autos 169.

Mich. 1942. A motorist's failure to give warning prior to backing automobile is evidence of "negligence", in view of rule that motorists backing into or upon public streets has duty of signaling independently of or additionally or alternatively to duty of maintaining lookout.—*In re Miller's Estate*, 2 N.W.2d 888, 300 Mich. 703.—Autos 169.

Mich. 1940. "Negligence" consists of the want of that reasonable care which would be exercised by a person of ordinary prudence under all the existing circumstances, and in view of the probable danger or injury.—*Grummel v. Decker*, 292 N.W. 562, 294 Mich. 71.—Neglig 233.

Mich. 1940. One who willfully injures another, or whose conduct in doing the injury is so wanton or reckless that it amounts to the same thing, is guilty of "willful misconduct" and not of mere "negligence".—*Cogswell v. Kells*, 292 N.W. 483, 293 Mich. 541.—Neglig 275.

Mich. 1939. "Negligence" is the failure to exercise that degree of care which the law imposes for protection of interests of those persons likely to be injuriously affected by the want of it.—*Perch v. New York Cent. R. Co.*, 293 N.W. 778, 294 Mich. 227.—Neglig 230.

Mich. 1938. "Negligence" is the failure to use that reasonable care and caution which an ordinarily prudent man would use under like or similar

circumstances.—*Carter v. C.F. Smith Co.*, 281 N.W. 380, 285 Mich. 621.—Neglig 233.

Mich. 1937. Employer cannot be charged with negligence as to matters over which he has no control, "negligence" being but a want of due care under all circumstances.—*Holgate v. Chrysler Corporation*, 271 N.W. 539, 279 Mich. 24.—Emp Liab 1.

Mich. 1936. The general rule is that every person has a right to presume every other person will perform his duty and obey the law, and, in the absence of reasonable ground to think otherwise, it is not "negligence" to assume he is not exposed to danger which can come to him only from violation of law or duty to such other person.—*Grant v. Richardson*, 267 N.W. 605, 276 Mich. 151.

Mich. 1935. Instruction that "negligence" is failure to observe for protection of others, or interest of others, that degree of care, precaution, and vigilance which circumstances justly demand and whereby another person suffers injury, and that it is not want of all care, but is merely lack of ordinary care, held proper.—*Hanna v. McClave*, 263 N.W. 742, 273 Mich. 571.—Neglig 232.

Mich. 1935. "Negligence" is the failure to observe that degree of care which the law imposes for the protection of interests likely to be injuriously affected by the want of it.—*Hale v. Cooper*, 261 N.W. 54, 271 Mich. 348, adhered to 263 N.W. 769, 271 Mich. 348.—Neglig 230.

Mich. 1935. "Negligence" involves a tortious invasion of legal rights of another.—*Hale v. Cooper*, 261 N.W. 54, 271 Mich. 348, adhered to 263 N.W. 769, 271 Mich. 348.—Neglig 200.

Mich. 1935. Person is not guilty of "negligence" merely because he fails to make provision against an accident which he could not reasonably be expected to foresee.—*Hale v. Cooper*, 261 N.W. 54, 271 Mich. 348, adhered to 263 N.W. 769, 271 Mich. 348.—Neglig 213.

Mich. 1935. It is "negligence" as a matter of law to drive an automobile along a highway in the dark at such a speed that it cannot be stopped within the distance that objects can be seen ahead of it.—*Johnson v. Fremont Canning Co.*, 259 N.W. 660, 270 Mich. 524.

Mich. 1934. "Negligence" is want of due care, or failure to exercise that degree of care and caution which an ordinarily prudent person usually exercises under same or similar circumstances.—*Mikulski v. Morgan*, 256 N.W. 339, 268 Mich. 314.—Neglig 232.

Mich. 1932. Driving in dark at such speed that automobile cannot be stopped within range of vision is "negligence." Pub. Acts 1921, No. 3.—*Angstman v. Wilson*, 241 N.W. 909, 258 Mich. 195.—Autos 168(8).

Mich. 1928. "Negligence" is characterized chiefly by inadvertence, while "wantonness" or "recklessness" is characterized by willfulness.—*People v. Orr*, 220 N.W. 777, 243 Mich. 300.—Neglig 200, 275.

Mich. 1928. "Negligence" is failure to exercise reasonable care under circumstances.—*De Jager v. Andringa*, 217 N.W. 332, 241 Mich. 474.—Neglig 233.

Mich. 1928. "Negligence" is failure to do what a reasonably careful man should do, or doing that which a reasonably careful man should not do.—*Koetsier v. Cargill Co.*, 217 N.W. 51, 241 Mich. 370.

Mich. 1919. "Negligence" is absence or want of ordinary care.—*Woods v. Chalmers Motor Co.*, 175 N.W. 449, 207 Mich. 556.

Mich. 1915. "Negligence" is a failure to exercise due care, and what is due care depends upon the circumstances attending action or the failure to act.—*Hemmila v. Cleveland-Cliffs Iron Co.*, 151 N.W. 873, 184 Mich. 567.—Neglig 231.

Mich. 1915. In an action against the proprietor of a dam for damages to lower riparian owners from overflows due to manipulation of discharges of water from the dam, though an instruction defining "negligence" as the doing or omitting to do something which persons of ordinary prudence and care would not have done or omitted to do under like or similar circumstances, was not correct by itself, when taken in connection with a further instruction that negligence was a disregard of duty, the mistake was corrected, and any error appearing was error without prejudice.—*Taylor v. Indiana & Michigan Elec. Co.*, 151 N.W. 739, 184 Mich. 578, L.R.A. 1915E,294.

Mich. 1908. The law of "negligence," which means the law of actionable negligence, as applied in most jurisdictions, embraces the doctrine of the assumption of risks of the part of an employé and the doctrine of contributory negligence; also the doctrine announced in *Billings v. Breinig*, 7 N.W. 722, 45 Mich. 65, 71, that although disobedience of a statute may be conclusive evidence of negligence, a condition of recovery by one urging disobedience is that such disobedience must be the proximate cause of the injury complained of, or that it contributed to the injury.—*Synszewski v. Schmidt*, 116 N.W. 1107, 153 Mich. 438.

Mich. 1905. "Negligence" on the part of a railroad company is the omission on its part to do something which persons conducting a railroad with reasonable care and caution should do.—*McCormick v. Detroit, G.H. & M.R. Co.*, 104 N.W. 390, 141 Mich. 17.

Mich.App. 1986. To extent that insured's complaint against insurer, which rejected insured's proof of loss for fire damage to house and garage, alleged "negligence" in insurer's refusal to pay, or failure to more properly investigate and assess merits of claim, complaint merely alleged breach of contract, so summary disposition would properly be granted with regard to "negligence" claim.—*Crossley v. Allstate Ins. Co.*, 400 N.W.2d 625, 155 Mich. App. 694.—Insurance 3379.

Mich.App. 1970. "Negligence" is founded upon failure to use due care.—*Johnstons' Estate v. United Airlines*, 178 N.W.2d 536, 23 Mich.App. 279.—Neglig 231.

Mich.App. 1968. State's permitting vandals and vagrants access to fire-prone building, to which state had immediate right to possession and control after period of redemption from tax sale had passed, constituted active "negligence" and state therefore was immune from liability for damage caused to other buildings when its building burned.—*Buckeye Union Fire Ins. Co. v. State*, 164 N.W.2d 699, 13 Mich.App. 498, reversed 178 N.W.2d 476, 383 Mich. 630, appeal after remand 195 N.W.2d 915, 38 Mich.App. 155.—States 112.2(3).

Mich.App. 1967. "Negligence" is conduct that fails to measure up to an acceptable standard.—*Wamser v. N. J. Westra & Sons, Inc.*, 155 N.W.2d 871, 9 Mich.App. 89.—Neglig 230.

Mich.App. 1966. "Negligence" is conduct that fails to measure up to acceptable standard, and standard now implied by the law is that of a reasonably prudent man acting under same or similar circumstances.—*Hackley Union Nat. Bank & Trust Co. v. Warren Radio Co.*, 145 N.W.2d 831, 5 Mich.App. 64.—Neglig 233.

Mich.App. 1966. "Negligence" is absence or want of care under the circumstances.—*St. Paul Fire & Marine Ins. Co. v. Michigan Consol. Gas Co.*, 143 N.W.2d 801, 4 Mich.App. 56.—Neglig 230.

Minn. 1981. "Negligence" consists of departure from standard of conduct required by law for the protection of others against unreasonable risk of harm.—*Seim v. Garavalia*, 306 N.W.2d 806.—Neglig 233.

Minn. 1980. "Negligence" is failure to exercise such care as persons of ordinary prudence usually exercise under such circumstances, but an action or omission is not negligence if harm that resulted from it could not be reasonably anticipated or foreseen.—*Flom v. Flom*, 291 N.W.2d 914.—Neglig 213, 233.

Minn. 1965. "Negligence" is the doing of something which an ordinarily prudent person would not do or the failure to do something which an ordinarily prudent person would do under like or similar circumstances.—*Erickson v. Van Web Equipment Co.*, 132 N.W.2d 814, 270 Minn. 42.—Neglig 232.

Minn. 1956. "Negligence" is the breach of legal duty, and it is immaterial whether the duty is one imposed by the rule of common law requiring the exercise of ordinary care not to injure another, or is imposed by statute designed for protection of others.—*Lynghaug v. Payte*, 76 N.W.2d 660, 247 Minn. 186, 56 A.L.R.2d 1090.—Neglig 250.

Minn. 1951. A combination of acts of commission or omission which together result in or create a condition which a person in exercise of reasonable care ought reasonably to anticipate is liable to result in injury to another constitutes "negligence".—*Yeager v. Chapman*, 45 N.W.2d 776, 233 Minn. 1, 22 A.L.R.2d 1260.—Neglig 233.

Minn. 1949. An act or omission is not negligent unless actor has knowledge or notice that it involves

danger to others; and duty to exercise care is measured by exigencies of occasion as they are or should be known to actor; and if no harm should be anticipated as a consequence of the act, there is no "negligence".—Despatch Oven Co. v. Rauenhorst, 40 N.W.2d 73, 229 Minn. 436.—Neglig 212.

Minn. 1948. "Negligence" involves the idea of fault, and an act or omission is not negligent unless actor had knowledge or notice that it involves danger to another.—Rue v. Wendland, 33 N.W.2d 593, 226 Minn. 449.—Neglig 212.

Minn. 1948. Precautionary duty depends on reason to apprehend results, and an act or omission from which no injury should be anticipated is not "negligence".—Rue v. Wendland, 33 N.W.2d 593, 226 Minn. 449.—Neglig 213.

Minn. 1948. "Negligence" is a departure from the standard of conduct required by the common law or statutes for protection of others against unreasonable risk or harm.—Peterson v. Minneapolis St. Ry. Co., 31 N.W.2d 905, 226 Minn. 27.—Neglig 233.

Minn. 1948. "Negligence" is the failure to exercise such care as persons of ordinary prudence usually exercise under similar circumstances.—Peterson v. Minneapolis St. Ry. Co., 31 N.W.2d 905, 226 Minn. 27.—Neglig 232.

Minn. 1944. If a person of ordinary prudence ought to anticipate from his acts or omissions injury to someone to whom he owes a duty, then it is "negligence" on his part to so act, and, if from the negligence an injury flows in unbroken sequence as a natural and probable consequence, liability follows.—Schmit v. Village of Cold Spring, 13 N.W.2d 382, 216 Minn. 465, 154 A.L.R. 1325.—Neglig 213.

Minn. 1941. If a defendant could not reasonably foresee any injury as the result of his acts, or if his conduct was reasonable in the light of what he could anticipate, there is no "negligence" and no liability.—Logan v. Hennepin Ave. M.-E. Church, 297 N.W. 333, 210 Minn. 96.—Neglig 213.

Minn. 1941. Before "negligence" is present, there must not only be a risk of harm to another's interest, but that risk must be an unreasonable one, and whether a risk of injury is present is determined by the application to the circumstances of the perception, knowledge and judgment of the reasonable man in effort to perceive the existence of an appreciable risk of invading another's interest.—Logan v. Hennepin Ave. M.-E. Church, 297 N.W. 333, 210 Minn. 96.—Neglig 213.

Minn. 1941. "Negligence" consists of a breach of duty to the injury of another.—Ruth v. Hutchinson Gas Co., 296 N.W. 136, 209 Minn. 248.—Neglig 250.

Minn. 1940. A cause of action alleging that township, in installing its water supply system, "wrongfully", negligently, and carelessly caused injury to plaintiff's water supply system, sounded in "negligence" and not in "trespass", and hence failed under statute where action was not commenced within one year after occurrence of the

injury as required by the statute and notice was not given within the statutory limit of time. Mason's Minn.St.1927, §§ 1229, 1831.—Kuehn v. Village of Mahtomedi, 292 N.W. 187, 207 Minn. 518.—Townsend 45.

Minn. 1939. "Negligence" is not an intentional tort, but can only result from conduct uncontrolled by intent.—Murphy v. Barlow Realty Co., 289 N.W. 563, 206 Minn. 527.—Neglig 201.

Minn. 1938. "Negligence" is the breach of a legal duty. It is immaterial whether the duty is one imposed by the rule of common law requiring the exercise of ordinary care not to injure another, or is imposed by a statute designed for the protection of others.—Middaugh v. Waseca Canning Co., 281 N.W. 818, 203 Minn. 456.

Minn. 1938. The performance of a lawful act in a manner so as to endanger others is "negligence".—Munkel v. Chicago, M., St. P. & P. R. Co., 278 N.W. 41, 202 Minn. 264.—Neglig 200.

Minn. 1936. "Negligence" is failure to exercise such care as persons of ordinary prudence usually exercise under similar circumstances.—Beckjord v. First Presbyterian Church of Merriam Park, 265 N.W. 336, 196 Minn. 474.—Neglig 232.

Minn. 1930. "Negligence" is failure to exercise such care as persons of ordinary prudence would exercise under similar circumstances.—Mingo v. Extrand, 230 N.W. 895, 180 Minn. 395.—Neglig 232.

Minn. 1925. "Negligence," generally speaking, means failure to exercise reasonable care, and reasonable care is that degree of care which an ordinarily careful or prudent person would exercise under like or similar circumstances.—Loverage v. Carmichael, 204 N.W. 921, 164 Minn. 76.

Minn. 1908. The term "willful negligence" is a misleading and contradictory expression. Conduct cannot be both "willful" and "negligent," as "negligence" involves inattention, and "willfulness," intention.—Anderson v. Minneapolis, St. P. & S.S.M. Ry. Co., 114 N.W. 1123, 103 Minn. 224, 14 L.R.A.N.S. 886.

Minn.App. 2001. "Negligence" is a departure from a standard of conduct required by the law for the protection of others against unreasonable risk of harm.—Blatz v. Allina Health System, 622 N.W.2d 376.—Neglig 202.

Minn.App. 1993. "Negligence" is breach of legal duty.—Steffey v. Soo Line R. Co., 498 N.W.2d 304, review denied.—Neglig 250.

Miss. 1998. "Negligence" is failure to exercise reasonable care under the circumstances.—Turner v. State, 726 So.2d 117, rehearing denied.—Neglig 233.

Miss. 1985. "Negligence" connotes failure to exercise reasonable care under the circumstances.—Smith v. City of West Point, 475 So.2d 816.—Neglig 233.

Miss. 1967. "Negligence" is result of failure to perform a duty, and hence actionable negligence

cannot exist in absence of a legal duty to an injured plaintiff.—*Stanley v. Morgan & Lindsey, Inc.*, 203 So.2d 473.—Neglig 210.

Miss. 1964. "Negligence" is the doing of some act which ordinarily reasonable prudent men would not have done under the same or similar circumstances.—*Edwards v. Murphree*, 160 So.2d 689, 249 Miss. 78.—Neglig 233.

Miss. 1963. "Negligence" is the failure to observe, for protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.—*Cole v. Delchamps, Inc.*, 152 So.2d 911, 246 Miss. 846.—Neglig 230.

Miss. 1959. "Negligence" is the failure to observe, for protection of the interests of another, that degree of care, precaution, and vigilance which the circumstances justly demand, as a result of which such other person suffers injury.—*Vaughan v. Lewis*, 112 So.2d 247, 236 Miss. 792.—Neglig 230.

Miss. 1952. "Negligence" is the failure to observe, for protection of interests of another person, that degree of care, precaution, and vigilance which circumstances justly demand, whereby such other person suffers injury.—*Clark v. Gilmore*, 57 So.2d 328, 213 Miss. 590.—Neglig 230.

Miss. 1950. "Negligence" is not the fact of danger, but the absence of requisite care.—*City of Meridian v. McCoy*, 43 So.2d 883.—Neglig 230.

Miss. 1949. While "negligence" is failure to use reasonable care, it remains an abstract concept until such negligence results proximately in injury to one to whom obligation of due care is owed.—*Campbell v. Willard*, 39 So.2d 483, 205 Miss. 783.—Neglig 372.

Miss. 1946. Employer's failure to disclose to employee her true physical condition, and permitting her to continue heavy work with full knowledge, through employer's doctors, of probability of hernia which later actually developed, was "negligence" within statute providing that employee does not assume risks of employment where injury or death results in whole or in part from master's negligence. Code 1942, § 1456.—*Blue Bell Globe Mfg. Co. v. Lewis*, 27 So.2d 900, 200 Miss. 685.—Emp Liab 136.

Miss. 1938. Under Louisiana law, an automobile owner's invitation to a guest to ride in an automobile on which the tires had been driven 17,000 miles did not constitute "negligence" or involve an unreasonable risk of harm for which owner would be liable for injuries received by guest when tire blew out, in absence of proof that tires contained any apparent defects or defects which could have been discovered by the owner in the exercise of ordinary care, notwithstanding that owner knew that his tires were worn and weak as compared with condition of newer tires.—*Monsour v. Farris*, 181 So. 326, 181 Miss. 803.—Autos 244(20).

Miss. 1938. Failure to anticipate remote possibilities does not constitute "negligence."—*Shuptrine v. Herron*, 180 So. 620, 182 Miss. 315.—Neglig 387.

Miss. 1935. Test of liability of owner or person in control of building to invitee is that of "negligence," which is failure to take such reasonable care as is taken or should be taken by experienced and prudent men.—*Daniel v. Jackson Infirmary*, 163 So. 447, 173 Miss. 832.—Neglig 1037(4).

Miss. 1934. "Negligence" is failure to take such reasonable care as is taken or should be taken by experienced and prudent men.—*Hammontree v. Cobb Const. Co.*, 152 So. 279, 168 Miss. 844.—Neglig 233.

Miss. 1933. Probability arises in law of negligence when viewed from standpoint of judgment of reasonably prudent man, as reasonable thing to be expected, and remote possibilities do not constitute "negligence."—*Burnside v. Gulf Refining Co.*, 148 So. 219, 166 Miss. 460.—Neglig 213.

Miss. 1928. "Negligence" of warehouseman must be based on things which should arouse attention of reasonably prudent person in care of his goods (*Hemingway's Code* 1927, § 9557).—*Oktibbeha County Cotton Warehouse Co. v. J.C. Page & Co.*, 117 So. 834, 151 Miss. 295.—Wareh 24(2).

Miss. 1912. Under Code 1906, § 1985, providing that, in all actions against railroad companies for injury to persons or property, proof of injury inflicted by the running of locomotives or cars shall be prima facie evidence of a lack of reasonable skill and care on the part of the servants of the company, proof of an injury raises a presumption of negligence, casting the burden of proof on the railroad company; and as "negligence" is a failure to observe, for the protection of another person, that degree of care which the circumstances justly demand, proof that the equipment of a train was proper and that the servants of the company kept a vigilant lookout is, in the absence of any proof as to the condition of the person injured, insufficient to rebut the statutory presumption.—*New Orleans, M. & C.R. Co. v. Cole*, 57 So. 556, 101 Miss. 173.

Miss. 1908. "Negligence" is a relative term, and depends upon the circumstances of each particular case. What might be negligence under some circumstances, at some time or place, may not be negligence under other circumstances, at another time and place.—*Johnson v. Yazoo & M.V.R. Co.*, 47 So. 785, 94 Miss. 447, 22 L.R.A.N.S. 312.

Mo. 1997. "Negligence" is conduct which falls below standard established by law for protection of others against unreasonable risk of harm. Restatement (Second) of Torts § 282.—*Gibson v. Brewer*, 952 S.W.2d 239.—Neglig 233.

Mo. 1995. Taxpayer's "negligence," warranting penalty assessment for income tax deficiency, is failure to make reasonable attempt to comply with state tax laws pertaining to income deductions. V.A.M.S. § 143.751.—*Hiatt v. Director of Revenue*, 899 S.W.2d 870.—Tax 1103.

Mo. 1958. Actionable "negligence" consists in the breach or nonperformance of some duty which party charged with negligent act or omission owed to the one suffering loss or damage thereby.—*Zuber v. Clarkson Const. Co.*, 315 S.W.2d 727.—Neglig 250.

Mo. 1956. Test of liability under the Federal Employers' Liability Act, is "negligence" which is the lack of due care under the circumstances, or failure to do what a reasonable and prudent man would ordinarily have done under the circumstances, or doing what such a person under the existing circumstances would not have done. Federal Employers' Liability Act, 45 U.S.C.A. § 51 et seq.—*Dunn v. Terminal R. Ass'n of St. Louis*, 285 S.W.2d 701.—Emp Liab 11.

Mo. 1954. Test of liability under Federal Employers' Liability Act is "negligence", defined as the lack of due care under the circumstances, or failure to do what a reasonable and prudent man would ordinarily have done under the circumstances, or doing what such a person under existing circumstances would not have done. Federal Employers' Liability Act, §§ 1 et seq., 4, as amended, 45 U.S.C.A. §§ 51 et seq., 54.—*Hughes v. Terminal R. Ass'n of St. Louis*, 265 S.W.2d 273.—Emp Liab 11.

Mo. 1953. "Negligence", under Federal Employers' Liability Act, consists of lack of due care under circumstances, or failure to do what reasonable and prudent man would ordinarily have done under circumstances of such situation, or doing what such person under existing circumstances would not have done. Federal Employers' Liability Act, 45 U.S.C.A. § 51 et seq.—*Wann v. St. Louis-S. F. Ry. Co.*, 263 S.W.2d 376, 364 Mo. 492.—Emp Liab 11.

Mo. 1951. Where both parties in motor vehicle collision case offered instructions defining terms "negligence" and "highest degree of care" and court by inadvertence omitted such definitions when instructions were read to jury, the omission was not an "invited error", or an error common to both parties.—*Fantin v. L. W. Hays, Inc.*, 242 S.W.2d 509.—App & E 882(12).

Mo. 1950. While allegations of "negligence" and of "willful wanton and reckless conduct" are not necessarily repugnant, a clear distinction exists between unintentional injury due to negligence, that is, the failure to observe due care, and injury, actually or impliedly intentional, due to willful, wanton or reckless conduct.—*Cosentino v. Heffelfinger*, 229 S.W.2d 546, 360 Mo. 535.—Neglig 201, 275; Plead 21.

Mo. 1949. "Negligence" involves inadvertence as distinguished from premeditation or formed intention which renders an act "wilful" negligence and wilfulness being mutually exclusive terms.—*Plant v. Thompson*, 221 S.W.2d 834, 359 Mo. 391.—Neglig 275.

Mo. 1949. A carrier's liability under Federal Employers' Liability Act for employee's death must be determined under general rule defining "negligence" as lack of due care, failure to do what

reasonable and prudent person would ordinarily do, or doing of what such a person would not do, under circumstances. Employers' Liability Act, 45 U.S.C.A. § 51 et seq.—*Lavender v. Illinois Cent. R. Co.*, 219 S.W.2d 353, 358 Mo. 1160, certiorari denied 70 S.Ct. 67, 338 U.S. 822, 94 L.Ed. 499, rehearing denied 70 S.Ct. 155, 338 U.S. 881, 94 L.Ed. 541.—Emp Liab 11.

Mo. 1948. One is not guilty of "negligence" unless his conduct falls below that of a reasonable man under like circumstances.—*Panke v. Shannon*, 212 S.W.2d 792, 357 Mo. 1195.—Neglig 233.

Mo. 1948. "Negligence" which imposes liability must result from faulty or defective foresight, not hindsight, on what should have been anticipated, rather than what happened.—*Panke v. Shannon*, 212 S.W.2d 792, 357 Mo. 1195.—Neglig 213.

Mo. 1946. Actionable "negligence" consists in breach or nonperformance of some duty which party charged with the negligent act or omission owes to the one suffering loss or damage thereby.—*Settle v. Baldwin*, 196 S.W.2d 299, 355 Mo. 336.—Neglig 250.

Mo. 1945. "Negligence", within meaning of Federal Employers' Liability Act, is the lack of due care under the circumstances, a failure to do what a reasonable and prudent man would ordinarily have done under the circumstances, or the doing what such a person under existing circumstances would not have done. Federal Employers' Liability Act §§ 1-10, 45 U.S.C.A. §§ 51-60.—*Joice v. Missouri-Kansas-Texas R. Co.*, 189 S.W.2d 568, 354 Mo. 439, 161 A.L.R. 383.—Emp Liab 14.

Mo. 1945. In action against gas pipe line company for injuries sustained by power company employee when dynamite charge exploded by employee burst gas pipe line causing escaping gas to ignite, instructing jury that persons engaged in the discharge of dynamite are under a duty to exercise such care as a "very prudent man" would exercise, was erroneous, since "negligence" is the failure to exercise that care which an ordinarily prudent man would exercise under the same or similar circumstances.—*Stumpf v. Panhandle Eastern Pipeline Co.*, 189 S.W.2d 223, 354 Mo. 208.—Gas 20(5).

Mo. 1944. "Negligence" in its colloquial meaning is the want of ordinary care, while "actual negligence" is negligence which breaches a duty owed to person injured.—*Cameron v. Small*, 182 S.W.2d 565.—Neglig 231, 250.

Mo. 1944. The word "negligence" in Federal Employers' Liability Act comprehends any negligence of employer causing or proximately contributing to injury, whether antecedent or subsequent to employee's negligence. Federal Employers' Liability Act § 3, and §§ 1, 4, as amended, 45 U.S.C.A. § 53 and §§ 51, 54.—*Mooney v. Terminal R. Ass'n of St. Louis*, 176 S.W.2d 605, 352 Mo. 245.—Emp Liab 146.

Mo. 1943. To constitute a "nuisance", there must be a degree of danger inherent in thing itself and violation of absolute duty to refrain from participating acts, while "negligence" is fail-

ure to exercise reasonable care, foresight and prudence, required under particular circumstances, in performance of such acts.—*Brown v. City of Craig*, 168 S.W.2d 1080, 350 Mo. 836.—Neglig 233; Nuis 1.

Mo. 1943. "Inherently dangerous," within rule that to constitute "nuisance", as distinguished from "negligence", there must be degree of danger inherent in thing itself, means danger inhering in instrumentality or condition itself at all times, so as to require special precautions to prevent injury, not danger arising from mere casual or collateral negligence of others with respect thereto under particular circumstances.—*Brown v. City of Craig*, 168 S.W.2d 1080, 350 Mo. 836.—Nuis 7.

Mo. 1943. In action against city for death of prisoner as result of burning of city jail, allegations of petition as to isolated location of jail, failure to provide means for prisoners to communicate with persons outside, lack of proper ventilation, absence of fire extinguishers, failure to provide jailer or attendant, etc., held insufficient as not pleading "nuisance," but "negligence" in performance of governmental function.—*Brown v. City of Craig*, 168 S.W.2d 1080, 350 Mo. 836.—Mun Corp 742(4).

Mo. 1941. If there is some probability of harm sufficiently serious that ordinary men would take precautions to avoid it, failure to do so is "negligence", and that the danger will more probably than otherwise not be encountered on a particular occasion does not dispense with exercise of care.—*Lloyd v. Alton R. Co.*, 159 S.W.2d 267, 348 Mo. 1222.—Neglig 213.

Mo. 1941. The word "negligence", as used in the Federal Employers' Liability Act, includes a deliberate and intentional injury of an employee by another employee of equal station. Federal Employers' Liability Act § 1 et seq., 45 U.S.C.A. §51 et seq.—*Steeley v. Kurn*, 157 S.W.2d 212, 348 Mo. 1142.—Emp Liab 105.

Mo. 1941. "Negligence" on part of officer consists only in a failure to use that degree of care which an ordinary, reasonable and prudent man would exercise under same or similar circumstances, and reasonable effort to perform duties pertaining to office is all the law requires.—*State ex rel. and to Use of City of St. Louis v. Priest*, 152 S.W.2d 109, 348 Mo. 37.—Offic 116.

Mo. 1941. The mere discovery of an object on the track not discernible to be a human being does not require employees in charge of train to stop or slacken speed unless circumstances would lead a reasonably prudent man to believe that the object was probably a human being, and hence there is no "negligence" making railroad liable. V.A.M.S. § 537.070.—*Cochran v. Thompson*, 148 S.W.2d 532, 347 Mo. 649.—R R 376.4.

Mo. 1940. A railroad is not liable to employee under Federal Employers' Liability Act on ground of "negligence" for other employee's wilful act wholly outside the scope of his employment while his employment was going on. Federal Employers' Liability Act, 45 U.S.C.A. § 51 et seq.—*Steeley v.*

Kurn, 146 S.W.2d 578, 347 Mo. 74, reversed 61 S.Ct. 1087, 313 U.S. 545, 85 L.Ed. 1512, on remand 157 S.W.2d 212, 348 Mo. 1142.—Emp Liab 106.

Mo. 1940. An employee's act in deliberately dropping heavy rod which four employees were lifting together without the customary warning was "malicious", and was not in furtherance of the master's business but interfered with it, and hence railroad was not liable for "negligence" under Federal Employers' Liability Act to other employee who was injured thereby. Federal Employers' Liability Act, 45 U.S.C.A. § 51 et seq.—*Steeley v. Kurn*, 146 S.W.2d 578, 347 Mo. 74, reversed 61 S.Ct. 1087, 313 U.S. 545, 85 L.Ed. 1512, on remand 157 S.W.2d 212, 348 Mo. 1142.—Emp Liab 106.

Mo. 1939. "Negligence" is an unintentional breach of a legal duty causing damage reasonably foreseeable without which breach the damage would not have occurred.—*Mann v. Pulliam*, 127 S.W.2d 426, 344 Mo. 543.—Neglig 202.

Mo. 1939. The question of "negligence" does not depend upon consideration after an accident of what might have been done to avoid the accident but depends upon what, under the then present circumstances, could reasonably have been anticipated and provided against.—*Mann v. Pulliam*, 127 S.W.2d 426, 344 Mo. 543.—Neglig 213.

Mo. 1939. Jars resulting from usual and ordinary handling of train are not "negligence," for which recovery may be had under the Federal Employers Liability Act. Federal Employers' Liability Act, 45 U.S.C.A. §§ 51–59.—*Mullen v. Lowden*, 124 S.W.2d 1152, 344 Mo. 40.—Emp Liab 73.

Mo. 1937. "Negligence" is not "positive wrong," but failure to exercise highest degree of care or mere act of inattention or inadvertence; "positive wrong" being wrongful act, willfully committed with intent to inflict injury.—*Blunk v. Snider*, 111 S.W.2d 163, 342 Mo. 26.—Neglig 201.

Mo. 1937. The failure to conform to standards of ordinary care of reasonable men under like circumstances is "negligence."—*Mrazek v. Terminal R. Ass'n of St. Louis*, 111 S.W.2d 26, 341 Mo. 1054, certiorari denied 58 S.Ct. 760, 303 U.S. 656, 82 L.Ed. 1116.—Neglig 232.

Mo. 1937. Under Illinois law, "negligence" presumes carelessness, heedlessness, and even recklessness, unaccompanied by any intent or purpose to injure, whereas "wilful or wanton" negligence implies a disregard of consequences, and absence of care for life, limb, or property which exhibits a conscious indifference to attendant consequences of act, or a willingness to inflict injury.—*Connole v. East St. Louis & S. Ry. Co.*, 102 S.W.2d 581, 340 Mo. 690.—Neglig 275.

Mo. 1937. Under Illinois law, "negligence" presumes carelessness, heedlessness, and even recklessness, unaccompanied by any intent or purpose to injure.—*Connole v. East St. Louis & S. Ry. Co.*, 102 S.W.2d 581, 340 Mo. 690.—Neglig 201.

Mo. 1932. "Negligence" is a failure to use the degree of care required under the particular cir-

cumstances involved.—*Pearson v. Kansas City*, 55 S.W.2d 485, 331 Mo. 885.—Neglig 230.

Mo. 1932. Word “negligence” in Federal Employers’ Liability Act comprehends any negligence of employer causing or proximately contributing to injury, whether antecedent or subsequent to employee’s negligence. Federal Employers’ Liability Act, §§ 1, 3, 45 U.S.C.A. §§ 51, 53.—*Moran v. Atchison, T. & S. F. Ry. Co.*, 48 S.W.2d 881, 330 Mo. 278, certiorari denied 53 S.Ct. 21, 287 U.S. 621, 77 L.Ed. 539.—Emp Liab 146.

Mo. 1930. Physician’s failure to exercise either ordinary care or ordinary skill owed to patient was “negligence.”—*Rothschild v. Barck*, 26 S.W.2d 760, 324 Mo. 1121.—Health 619.

Mo. 1928. Actual or constructive knowledge of defective condition of car causing employee’s death is necessary to render railroad liable; “negligence”. Federal Employers’ Liability Act, 45 U.S.C.A. §§ 51-59.—*Wilson v. Missouri Pac. R. Co.*, 5 S.W.2d 19, 319 Mo. 308, certiorari denied 49 S.Ct. 25, 278 U.S. 622, 73 L.Ed. 543.—Emp Liab 56.

Mo. 1916. “Negligence” consists in the failure to exercise that degree of care which persons of ordinary prudence in the same occupation exercise under the same circumstances to protect others from injury; the care required by a master or servant adjusting itself to the circumstances.—*Parks v. Central Coal & Coke Co.*, 183 S.W. 560.

Mo. 1915. In an action under a California statute against a railroad company, by the mother of deceased, for his death while on defendant’s freight train, as caretaker of stock, caused by stepping off the caboose in the dark and falling off a trestle upon which the train had been moved without his knowledge, evidence held to sustain a finding that deceased was in the exercise of due care; “due care” being a care adjusting itself to the circumstances of the case, and “negligence” being the absence of such care.—*Miller v. Southern Pac. Co.*, 178 S.W. 885, 266 Mo. 19.

Mo. 1913. Liability for “negligence” does not hinge on whether, by reasonable prudence, the very injury complained of should have been foreseen; but a party may be held liable for anything which, after the injury is complete, appears to have been a natural and probable consequence of his act or omission.—*Benton v. City of St. Louis*, 154 S.W. 473, 248 Mo. 98.

Mo. 1912. “Negligence” is the failure to observe for the protection of the interest of another the degree of care, prudence, and vigilance which the circumstances demand.—*Campbell v. United Rys. Co. of St. Louis*, 147 S.W. 788, 243 Mo. 141.—Neglig 230.

Mo. 1910. Degrees of negligence are not recognized; for, though the terms “wanton, willful, and reckless” are sometimes used in characterizing conduct, yet, the law applies only the word “negligence,” which is a failure to perform a duty, and, though the law recognizes degrees in care, very high care and ordinary care, the failure to exercise the highest degree of care required is only negligence,

though failure to exercise ordinary care is also negligence.—*Young v. St. Louis, I.M. & S. Ry. Co.*, 127 S.W. 19, 227 Mo. 307.—Neglig 230, 272.

Mo. 1909. “Negligence” must depend on a duty owed by one person to another which is negligently performed.—*Coin v. John H. Talge Lounge Co.*, 121 S.W. 1, 222 Mo. 488, 25 L.R.A.N.S. 1179, 17 Am. Ann. Cas. 888.—Neglig 250.

Mo. 1908. “Negligence,” as distinguished from the common-law definition, may arise from the failure to discharge a duty imposed by a statute or municipal ordinance.—*Strottman v. St. Louis, I.M. & S. Ry. Co.*, 109 S.W. 769, 211 Mo. 227.

Mo. 1907. “Ordinary care” means such care and prudence as an ordinarily prudent person would exercise under the circumstances detailed in evidence, and “negligence” means the failure to exercise ordinary care.—*Heberling v. City of Warrensburg*, 103 S.W. 36, 204 Mo. 604.

Mo. 1906. “Negligence” rests in tort. It is the absence of due care which is a duty lying at the root of the social compact.—*Charlton v. St. Louis & S.F.R. Co.*, 98 S.W. 529, 200 Mo. 413.

Mo. 1906. “Negligence” has been defined to be the “absence of care, according to the circumstances.” Also in “its civil relations is such an inadvertent imperfection by a responsible human agent in the discharge of a legal duty, as immediately produces, in an ordinary and natural sequence, a damage to another. The inadvertency, or want of due consideration of duty, is the *injuria* on which, when naturally followed by the *damnum*, the suit is based.” According to another work, “negligence” consists of “an omission by a responsible party to use that degree of care, diligence, and skill which it was his legal duty to use for the protection of another person from injury, as, in a natural and continuous sequence, causes unintended damage to the latter.” Again, “negligence consists in doing something which a reasonably prudent man would not have done under the circumstances, or in failing to do something which a reasonably prudent man, under the circumstances, would have done.” All these definitions mean the same thing, viz., that “negligence” is the absence of due care, and due care is a care adjusting itself to the circumstances of the case.—*Dean v. Kansas City, St. L. & C.R. Co.*, 97 S.W. 910, 199 Mo. 386.

Mo. 1906. “Negligence” is the want of “ordinary care.” As applied to a street car motorman in the case of a collision with a vehicle, it means the neglect to use “ordinary care” in observing it or to check the car so as to avoid hitting it.—*Peterson v. St. Louis Transit Co.*, 97 S.W. 860, 199 Mo. 331.

Mo. 1903. “Negligence” is a failure to exercise ordinary care, or a degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.—*Moore v. Lindell Ry. Co.*, 75 S.W. 672, 176 Mo. 528.

Mo. 1896. “Negligence” means the failure to exercise the care usually exercised by parties of ordinary caution and prudence in like circumstances.—*Helfenstein v. Medart*, 36 S.W. 863, 136

Mo. 595, opinion adopted 37 S.W. 829, 136 Mo. 595, rehearing overruled 38 S.W. 294, 136 Mo. 595.

Mo. 1893. "Negligence" means without exercising that degree of care which a person of ordinary common sense and prudence, under like circumstances and in the performance of a like act, would have exercised.—*Flesh v. Lindsay*, 21 S.W. 907, 115 Mo. 1, 37 Am.St.Rep. 374.

Mo. 1890. By the term "negligence" is meant the want of that degree of care that an ordinarily prudent person would have exercised under the same circumstances.—*Wilkins v. St. Louis, I.M. & S. Ry. Co.*, 13 S.W. 893, 101 Mo. 93.

Mo.App. E.D. 2001. "Negligence" is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.—*Hosto v. Union Elec. Co.*, 51 S.W.3d 133, rehearing, transfer denied, and transfer denied.—Neglig 250.

Mo.App. E.D. 1988. "Negligence" is defined as the failure to use the degree of care required under the particular circumstances involved.—*Duncan v. Missouri Bd. for Architects, Professional Engineers and Land Surveyors*, 744 S.W.2d 524.—Neglig 230.

Mo.App. E.D. 1982. Words "negligence" and "intentional" are contradictory; one excludes other, and actions based on them are not synonymous.—*Miller v. Kruetz*, 643 S.W.2d 310.—Neglig 201.

Mo.App. S.D. 2002. "Fraud," being a malfeasance, is a positive act resulting from a willful intent to deceive; on the other hand, "negligence" is strictly nonfeasance, or a wrongful act resulting from inattention or carelessness and not from design.—*In re Marriage of Echessa*, 74 S.W.3d 802, rehearing, transfer denied.—Fraud 4; Neglig 200, 201.

Mo.App. S.D. 1984. In automobile driver's action for damages for personal injury sustained when her automobile struck rear part of defendant's truck, defendant's failure to define phrase "highest degree of care" in verdict directing instruction was error, despite fact that definition was provided for term "negligence," which is not synonymous. MAI Nos. 11.02, Pt. II, 17.04, 17.04 note; V.A.M.S. § 304.010, subd. 1.—*Kindle v. Keene*, 676 S.W.2d 82.—Trial 219.

Mo.App. S.D. 1981. "Negligence" is strictly nonfeasance or wrongful act resulting from inattention or carelessness and not from design.—*Harris v. Penninger*, 613 S.W.2d 211.—Neglig 201.

Mo.App. W.D. 2000. "Negligence" is the failure to exercise the degree of care which a reasonably prudent and careful person would use under the same or similar circumstances.—*Chiney v. American Drug Stores, Inc.*, 21 S.W.3d 14, rehearing, transfer denied.—Neglig 233.

Mo.App. W.D. 1998. "Negligence" is the failure to exercise the degree of care that a reasonably prudent and careful person would use under the same or similar circumstances.—*Weeks v. Rupp*, 966 S.W.2d 387.—Neglig 233.

Mo.App. W.D. 1997. "Negligence," in medical malpractice context, is failure to use that degree of skill and learning ordinarily used by members of one's profession under same or similar circumstances.—*Sheffler v. Arana*, 950 S.W.2d 259, rehearing, transfer denied.—Health 619.

Mo.App. W.D. 1995. "Negligence" is failure to exercise degree of care that reasonably prudent and careful person would use under same or similar circumstances.—*Jackson v. City of Blue Springs*, 904 S.W.2d 322, rehearing, transfer denied, and transfer denied.—Neglig 233.

Mo.App. W.D. 1985. Term "negligent" or "negligence" as used in instruction which requires verdict for bailor if jury believes that warehouseman was negligent and that as a result of such negligence, bailor sustained damage, means failure to use ordinary care.—*Royster v. Pittman*, 691 S.W.2d 305.—Wareh 34(10).

Mo.App. 1977. In "negligence" action brought by patient against proctologists, the term "negligence" meant failure to use that degree of skill and learning ordinarily used under same or similar circumstances by members of proctologists' profession.—*Martin v. Barbour*, 558 S.W.2d 200.—Health 667.

Mo.App. 1976. "Negligence" consists of a failure to use ordinary care to avoid injury to others; "ordinary care" is a relative term and its exercise requires precautions commensurate with the dangers to be reasonably anticipated under the circumstances.—*Niemczyk v. Burleson*, 538 S.W.2d 737.—Neglig 232.

Mo.App. 1975. "Negligence" means actionable negligence, the existence of a duty on the part of defendant to protect plaintiff from injury, defendant's failure to meet that duty and injury to plaintiff from defendant's failure to perform duty.—*Hulahan v. Sheehan*, 522 S.W.2d 134.—Neglig 202.

Mo.App. 1968. Nuisance and negligence are two different kinds of torts; "negligence" is failure to use degree of care required under particular circumstances involved; whereas "nuisance" does not rest upon degree of care used but on degree of danger existing with best of care.—*Titone v. Teis Const. Co.*, 426 S.W.2d 665.—Neglig 230; Nuis 7.

Mo.App. 1967. Words "negligence" and "intentional" are contradictory, and "negligence" is not synonymous with "intentional action".—*Martin v. Yeoham*, 419 S.W.2d 937.—Neglig 201.

Mo.App. 1963. "Negligence" within Federal Employers' Liability Act includes assault in course of discharge of employee's duties and in furtherance of work of employer's business. Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51.—*Kutz v. Terminal R. R. Ass'n of St. Louis*, 367 S.W.2d 55.—Emp Liab 114.

Mo.App. 1959. While "negligence" consists of a failure to use ordinary care to avoid injury to others, "ordinary care" is a relative term, and its exercise requires precautions commensurate with the dangers reasonably to be anticipated under the

circumstances.—*Whitehead v. Schrick*, 328 S.W.2d 170.—Neglig 232.

Mo.App. 1958. To constitute actionable "negligence" there must exist a duty of defendant to protect plaintiff from injury, failure to discharge that duty, and injury resulting from the failure.—*Eddy v. Missouri Public Service Co.*, 309 S.W.2d 4.—Neglig 202.

Mo.App. 1956. In simple fact situations, a recovery on the theory of specific negligence will be permitted to stand where the plaintiff specifically charges, proves and submits the negligent commission of a common law wrong by a specified person under specific circumstances at a specified place and the doing of a specified thing in a specified manner, the whole of which the law denominates as "negligence."—*Chiodini v. Terminal R. Ass'n of St. Louis*, 287 S.W.2d 357.—Neglig 1512, 1650, 1693.

Mo.App. 1952. "Negligence" is a failure to exercise the highest degree of care.—*Fisher v. Duster*, 245 S.W.2d 172.—Neglig 230.

Mo.App. 1950. An act done intentionally, willfully or wantonly is the antithesis of "negligence."—*Willard v. Bethurem*, 234 S.W.2d 18.—Neglig 201, 275.

Mo.App. 1949. "Negligence" is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand whereby such other person suffers injury.—*Niedner v. Wabash R. Co.*, 219 S.W.2d 886.—Neglig 230.

Mo.App. 1948. There is a distinction between "negligence" and "actionable negligence," and proof of what might amount to negligence does not give rise to a cause of action unless the particular act or omission not only involved a breach of duty owed to another under the existing circumstances, but also directly and proximately resulted in such other person's injury.—*Bowers v. Columbia Terminals Co.*, 213 S.W.2d 663.—Neglig 372.

Mo.App. 1947. "Negligence" is a failure to exercise the degree of care required under the particular circumstances.—*Dowell v. City of Hannibal*, 200 S.W.2d 546, reversed 210 S.W.2d 4, 357 Mo. 525.—Neglig 230.

Mo.App. 1943. "Negligence" is a failure to use the degree of care required under the particular circumstances involved.—*Bollinger v. Mungle*, 175 S.W.2d 912.—Neglig 230.

Mo.App. 1943. "Negligence" is a failure to exercise such care as a reasonably prudent person would ordinarily exercise under the same or similar circumstances to avoid causing injury.—*Daugherty v. Spuck Iron & Foundry Co.*, 175 S.W.2d 45.—Neglig 233.

Mo.App. 1943. "Negligence" depends upon the many considerations which go to determine whether due care has been exercised in the particular instance in which the question arises.—*Schiermeier v. Kroger Grocery & Baking Co.*, 167 S.W.2d 967.—Neglig 231.

Mo.App. 1942. "Negligence" is the want of such care as ordinarily or reasonably prudent and careful man would exercise under similar circumstances, and is the failure to observe for the protection of the interests of another the degree of care, prudence and vigilance which the circumstances demand.—*Beckman v. Kinder*, 165 S.W.2d 311, 237 Mo.App. 52.—Neglig 233.

Mo.App. 1942. A collector of revenue receiving a taxpayer's check in payment of taxes, in the absence of evidence showing that he knew or had reasonable cause to believe that the drawee bank was about to fail, was under no obligation to take the taxpayer's check to the bank and procure the cash on it, and where the collector deposited the check in the bank where he did his regular banking business within an hour and a half after he received it, he was guilty of no "negligence" which would warrant a recovery by the taxpayer.—*Beckman v. Kinder*, 165 S.W.2d 311, 237 Mo.App. 52.—Tax 564.

Mo.App. 1941. The question of "negligence" does not depend upon consideration after an accident of what might have been done to avoid the accident but depends upon what, under the then present circumstances, could reasonably have been anticipated and provided against.—*Bauer v. Wood*, 154 S.W.2d 356, 236 Mo.App. 266.—Neglig 213.

Mo.App. 1941. The fact that escalator on which store patron's minor son was injured had the latest and most improved type of guard at place of injury would not establish freedom from negligence, but real test of "negligence" was whether escalator was an instrumentality attractive and dangerous to a child of tender years to such extent that a reasonably prudent person exercising ordinary care to keep his store and facilities therein necessarily used by his invitees in a reasonably safe condition for their use, would have anticipated that a child of tender years might be attracted to the escalator and injured by getting his hand caught as did patron's minor child, and in exercise of such care would have provided a guard to protect the child from such injury.—*Graves v. May Department Stores Co.*, 153 S.W.2d 778.—Carr 293.

Mo.App. 1941. A petition by surety on bond of guardian alleging generally that bank was negligent and careless in permitting guardian to deposit check in his personal account and to thereafter draw funds therefrom did not state a cause of action for "negligence."—*U.S. Fidelity & Guaranty Co. v. Mississippi Valley Trust Co.*, 153 S.W.2d 752.—Banks 154(5).

Mo.App. 1941. The word "negligence" in common-law terminology is used to express the foundation of civil liability for injury to person or property, resulting from other than premeditation and formed intention.—*U.S. Fidelity & Guaranty Co. v. Mississippi Valley Trust Co.*, 153 S.W.2d 752.—Neglig 201.

Mo.App. 1941. "Negligence" is the failure to exercise ordinary care, and it must be predicated on what should have been anticipated and not merely

on what happened.—*Perringer v. Lynn Food Co.*, 148 S.W.2d 601.—*Neglig* 232.

Mo.App. 1941. Where the object may be readily observed by a servant whose duty it is in cleaning table to observe, pick up and put away objects found thereon, it is not “negligence” for an employer of a domestic servant to place a needle, pin or similar object on a table in employer’s home.—*Pietraschke v. Pollnow*, 147 S.W.2d 167.—*Emp Liab* 43.

Mo.App. 1941. It is not “negligence” to fail to take precautionary measures to prevent an injury when injury could not reasonably have been anticipated and would not, unless under exceptional circumstances, have happened.—*Pietraschke v. Pollnow*, 147 S.W.2d 167.—*Neglig* 213.

Mo.App. 1940. Ordinarily, “punitive damages” are not recoverable in actions for negligence because “negligence”, which is a mere omission of duty to exercise care, is the antithesis of willful or intentional conduct.—*Mason v. Kurn*, 145 S.W.2d 465, opinion quashed *State ex rel. Kurn v. Hughes*, 153 S.W.2d 46, 348 Mo. 177, reversed 154 S.W.2d 397.—*Damag* 91(3).

Mo.App. 1940. “Negligence” is a positive wrong, a breach of duty.—*Foster v. Modern Woodmen of America*, 138 S.W.2d 18, 235 Mo.App. 386.—*Neglig* 250.

Mo.App. 1940. A motorist’s failure to see that on highway which can be observed by due care is as much “negligence” as his failure to look at all. R.S.1939, § 8383 (V.A.M.S. § 304.010).—*Rohmann v. City of Richmond Heights*, 135 S.W.2d 378.—*Autos* 285.

Mo.App. 1940. Not to see what is plainly visible when there is a duty to look constitutes “negligence.”—*Rohmann v. City of Richmond Heights*, 135 S.W.2d 378.—*Neglig* 506(7).

Mo.App. 1939. There are degrees of care, and failure to exercise proper degree of care is “negligence,” but there are no degrees of negligence.—*Murray v. De Luxe Motor Stages of Illinois*, 133 S.W.2d 1074.—*Neglig* 230, 272.

Mo.App. 1938. “Negligence” is a failure to use the degree of care required under the particular circumstances involved.—*Slack v. Kansas City Gas Co.*, 120 S.W.2d 70, 233 Mo.App. 306.—*Neglig* 230.

Mo.App. 1937. The failure of an employer to exercise such reasonable diligence, caution, and foresight as a prudent man would exercise under the circumstances is “negligence.”—*Sweeney v. Terminal R. Ass’n of St. Louis*, 110 S.W.2d 852.—*Emp Liab* 11.

Mo.App. 1937. In pedestrian’s action against city for injuries sustained in stepping into water meter box in parkway between street and sidewalk, instruction that city was required to exercise ordinary care to keep parkway, including box and its lid, in reasonably safe condition for use of pedestrians,

to use ordinary care to inspect, and to ascertain dangerous defects, if any, held not prejudicial, as imposing absolute duty on city or unduly emphasizing care required, especially in view of instruction defining “negligence” as failure to use or exercise ordinary care, and defining “ordinary care” as care which ordinary, careful, and prudent person would use under same or similar circumstances.—*Hammack v. City of Sedalia*, 105 S.W.2d 34.—*Trial* 296(3).

Mo.App. 1934. “Negligence,” being relative term, may consist of failure to use only ordinary care or else high care, depending on duty imposed by law.—*Stewart v. St. Louis Public Service Co.*, 75 S.W.2d 634.—*Neglig* 230.

Mo.App. 1933. “Negligence” is a positive wrong, a breach of duty, and no person may recover damages for such wrong save one to whom duty is owing.—*Forck v. Prudential Ins. Co. of America*, 66 S.W.2d 983, 228 Mo.App. 316.—*Neglig* 250.

Mo.App. 1932. Evidence of willfulness and wantonness on part of interurban railroad colliding with automobile crossing tracks to avoid collision with another automobile held insufficient to raise jury question. “Willfulness” or “wantonness” is such gross want of care and regard for rights of others as to imply a disregard of consequences, or a willingness to inflict injury, and very gist of willfulness and wantonness is intent to injure, whereas “negligence” presumes carelessness, heedlessness, or even recklessness, but without intent or purpose to injure.—*Moore v. East St. Louis & S. Ry. Co.*, 54 S.W.2d 767.

Mo.App. 1930. Instruction, in pedestrian’s action for personal injuries sustained when struck by automobile, defining “negligence,” “highest degree of care,” and “ordinary care,” held not prejudicial.—*Allen v. Purvis*, 30 S.W.2d 196.—*App & E* 1064.1(4).

Mo.App. 1927. “Negligence” is lack of due care, under circumstances.—*Hults v. Miller*, 299 S.W. 85.—*Neglig* 231.

Mo.App. 1925. No matter at what speed motorist approaches an intersecting highway, he must have motorcar under control, and Acts 1911, p. 327, places highest degree of care on motorist, and anything less than that is “negligence.”—*D’Wolf v. Stix-Baer & Fuller Dry Goods Co.*, 273 S.W. 172.—*Autos* 168(6).

Mo.App. 1920. “Negligence” is a relative term, and may be a failure to use ordinary care or high care, depending on the duty imposed by the law, and should be defined.—*Foy v. United Rys. Co. of St. Louis*, 226 S.W. 325, 205 Mo.App. 521.—*Trial* 219.

Mo.App. 1920. “Negligence” is properly defined in an instruction as failure to use ordinary care, which is the care which reasonably prudent men would use under the same and similar circumstances.—*Gilbert v. Hilliard*, 222 S.W. 1027.—*Neglig* 232.

Mo.App. 1918. In action by customer of light company, for injuries, due to falling on a floor made slippery from mopping, while on the premises to pay a bill, where it appeared that defendant could not have anticipated that any damage would occur to any person from walking over an apparently dry part of the floor, defendant was not guilty of any actionable negligence; "negligence" consisting in doing something which a reasonably prudent man would not have done under the circumstances, or in failing to do something which a reasonably prudent man would have done.—*Cluett v. Union Electric Light & Power Co.*, 205 S.W. 72, affirmed 220 S.W. 865.—*Neglig* 1104(8).

Mo.App. 1915. "Negligence" is a positive wrong which must be established by facts and circumstances including inferences, but may not be presumed.—*Whitesides v. Chicago, B. & Q.R. Co.*, 172 S.W. 467, 186 Mo.App. 608.

Mo.App. 1914. A master is not negligent toward a servant when he conducts his business as other prudent persons ordinarily conduct the same kind of business; and, being liable for negligence and not for danger, his duty to his servant does not require the elimination of dangers inherent in the work conducted in a reasonably careful manner; but he is held to ordinary care to keep the dangers within their inherent bounds, and liable to a servant injured from a failure to do so, however great the "natural dangers," that term meaning those which reasonable care, having regard not only to the safety of the servant, but also the necessities of the business, cannot be expected to suppress, while the term "negligence," as to a master's duty, means the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.—*Gummerson v. Kansas City Bolt & Nut Co.*, 171 S.W. 959, 185 Mo.App. 7.

Mo.App. 1914. "Negligence" is a breach of duty which one man owes to another, and where there is no duty there can be no "actionable negligence."—*Cornett v. Chicago, B. & Q.R. Co.*, 171 S.W. 15, 184 Mo.App. 463.

Mo.App. 1914. "Negligence" is a failure to exercise that degree of care which ordinarily prudent persons are accustomed to exercise under similar circumstances, it being a purely relative term depending on the facts of each particular case, while "contributory negligence" necessarily implied such failure on the part of more than one person.—*Rogers v. Tegarden Packing Co.*, 170 S.W. 675, 185 Mo.App. 99.

Mo.App. 1914. "Negligence" is the failure to use ordinary care toward a person to whom the defendant owes the duty of observing ordinary care, and so, where the mules which plaintiff was driving across a farm crossing ran down the track, and upon running back were killed at the crossing, the railroad company was not guilty of negligence, unless its servants might have seen the animals in time to have avoided the injury had they been maintaining a lookout for stock on the crossing, for a

railroad company is not bound to maintain a lookout for stock at places other than crossings.—*Alexander v. Missouri Pac. Ry. Co.*, 165 S.W. 1156, 178 Mo.App. 184.

Mo.App. 1912. "Negligence" and "actionable negligence," even under the turntable doctrine, are distinguishable terms, since carelessness does not always involve liability, which attaches only when there has been a violation of duty by the party charged toward the party injured.—*Hight v. American Bakery Co.*, 151 S.W. 776, 168 Mo.App. 431.

Mo.App. 1911. "Negligence" is a relative term, and implies the neglect of some duty.—*Cole v. Jones*, 141 S.W. 689, 159 Mo.App. 472.

Mo.App. 1911. "Negligence" in its technical sense embraces failure to discharge a legal duty to an injured person.—*Goodwin v. Columbia Telephone Co.*, 138 S.W. 940, 157 Mo.App. 596.

Mo.App. 1911. "Negligence" is a relative term, and its existence must be determined in view of the surrounding circumstances; the test being whether the person charged acted as an ordinarily prudent man would have done in the same or similar circumstances.—*Lyman v. Dale*, 136 S.W. 760, 156 Mo.App. 427.

Mo.App. 1911. "Negligence" is a failure to exercise reasonable care.—*Jarrell v. Blackbird Block Coal Co.*, 136 S.W. 754, 154 Mo.App. 552.

Mo.App. 1910. The test of "negligence" is: Did the human agent in charge of the instrumentality causing the injury complained of act with the care that an ordinarily prudent person under the same circumstances would have exercised, and, if he did, there is no actionable negligence.—*Wilkerson v. St. Louis & S.F.R. Co.*, 124 S.W. 543, 140 Mo.App. 306.

Mo.App. 1908. The component parts of "negligence" are (1) a legal duty to exercise due care; (2) a breach of that duty; (3) the absence of distinct intention to produce the precise damage, if any, which actually follows.—*Richmond v. Missouri Pac. Ry. Co.*, 113 S.W. 708, 133 Mo.App. 463.

Mo.App. 1908. "Negligence" is a relative term, and what would be negligence in one situation might not be in another.—*Gallagher v. City of Tipton*, 113 S.W. 674, 133 Mo.App. 557.—*Neglig* 200, 230.

Mo.App. 1908. Where an instruction defining "negligence" as the want of such care "as a prudent person would exercise," instead of "an ordinarily" prudent person was the only instruction in the case defining negligence, and was referred to by defendant in its instructions as giving the definition of negligence, defendant thereby adopted it, and could not complain on appeal that it was erroneous.—*Spaulding v. Metropolitan St. Ry. Co.*, 107 S.W. 1049, 129 Mo.App. 607.

Mo.App. 1907. An instruction "that the term 'negligence,' as used in the instruction, means the want of that care and prudence which a man of ordinary intelligence would exercise under all the circumstances of the situation," is erroneous, where

the case is bottomed on negligence and defended on the ground of contributory negligence, since it does not correctly define the term.—*Van Cleve v. St. Louis, M. & S.E.R. Co.*, 101 S.W. 632, 124 Mo.App. 224.—Neglig 1720.

Mo.App. 1906. Where a child employed in a factory was injured, "negligence" on his part meant his failure to exercise such care as a boy of his intelligence, capacity, and experience, as shown by the evidence, would have usually exercised in the same situation and circumstances.—*Morgan v. C. Hager & Sons Hinge Mfg. Co.*, 97 S.W. 638, 120 Mo.App. 590.

Mo.App. 1906. There are no degrees of "negligence." There are degrees of care, and a failure to exercise that proper degree of care as the law requires is "negligence."—*Rattan v. Central Electric Ry. Co.*, 96 S.W. 735, 120 Mo.App. 270.

Mo.App. 1905. "Negligence," in actions for personal injury, means the doing of some act which a cautious and prudent man would not do, or neglecting to do some act which a cautious and prudent man would not neglect. Prudent men often depart from common usage in the performance of duty without overstepping the boundaries of reasonable care. If they did not, there would be little, if any, progress made in any craft. The law does not call a man careless because he refuses to place himself in bondage to custom. The advancement of art, science, trade, or handicraft requires that human effort be given a wider field of operation than that already occupied. Therefore a given act is denominated as negligent, not that it is violative of custom, but because it is a thing no prudent man would do.—*Brunke v. Missouri & K. Telephone Co.*, 90 S.W. 753, 115 Mo.App. 36.

Mo.App. 1904. An instruction that by the term "negligence" is meant the want of that degree of care that an ordinarily prudent person would have exercised under the same or similar circumstances is correct.—*Meng v. St. Louis & Suburban Ry. Co.*, 84 S.W. 213, 108 Mo.App. 553.

Mo.App. 1904. "Negligence" consists in doing or permitting an act by which a legal duty or obligation has been violated.—*Glaser v. Rothschild*, 80 S.W. 332, 106 Mo.App. 418, reversed 120 S.W. 1, 221 Mo. 180, 22 L.R.A.N.S. 1045, 17 Am. Ann. Cas. 576.

Mo.App. 1903. "Negligence," such as to preclude a recovery for injuries, is merely the absence of such care as a person of ordinary prudence would exercise under similar circumstances.—*Meyers v. Chicago, R.I. & P. Ry. Co.*, 77 S.W. 149, 103 Mo.App. 268.

Mont. 1993. Tort of "negligence" arises when person has legally recognized duty, person breaches that duty, breach of duty acts as legal cause of another's injury, and injury results in actual loss or damage.—*Geiger v. Department of Revenue*, 858 P.2d 1250, 260 Mont. 294.—Neglig 202.

Mont. 1989. Builders of oil separator facility were not liable for "negligence" for death of workers exposed to leakage of hydrogen sulfide gas, as

they had sold facility and released all control of it.—*Papp v. Rocky Mountain Oil and Minerals, Inc.*, 769 P.2d 1249, 236 Mont. 330.—Neglig 1205(2).

Mont. 1983. Term "negligence" in comparative negligence statutes does not encompass willful or wanton misconduct, and therefore, in an action based on such conduct, the comparative negligence statute is inapplicable and plaintiff's own contributory negligence should not reduce his recovery. (Per Haswell, C.J., with two Justices concurring.) MCA 1-1-204 (4, 5), 27-1-701, 27-1-702.—*Derenberger v. Lutey*, 674 P.2d 485, 207 Mont. 1.—Neglig 549(7).

Mont. 1969. "Negligence" is conduct falling below standard established for lawful protection of others against unreasonable risk and it necessarily involves concepts of reasonableness and foreseeability. R.C.M.1947, § 19-103, subd. 16.—*Mang v. Eliasson*, 458 P.2d 777, 153 Mont. 431.—Neglig 233.

Mont. 1969. "Negligence" is failure to use ordinary care under circumstances.—*McCusker v. Roberts*, 452 P.2d 408, 152 Mont. 513.—Neglig 232.

Mont. 1944. "Negligence" is failure to do what a reasonable and prudent person would ordinarily have done under circumstances of the situation, or doing what such person under existing circumstances would not have done.—*Ahlquist v. Mulvaney Realty Co.*, 152 P.2d 137, 116 Mont. 6.—Neglig 233.

Mont. 1937. "Negligence" involves a want of care in one who ought to bestow care. It is an omission of duty. But the law imposes no duty or obligation of care on one who has no control over his mental faculties, and hence no control over his physical actions.—*Hier v. Farmers Mut. Fire Ins. Co.*, 67 P.2d 831, 104 Mont. 471, 110 A.L.R. 1051.

Mont. 1934. "Negligence," as applied to acts of omission, is failure to do what reasonable and prudent person would ordinarily do in circumstances.—*In re Mullen's Estate*, 33 P.2d 270, 97 Mont. 144.—Neglig 233.

Mont. 1930. "Negligence" is failure to do what reasonable and prudent person would ordinarily have done under circumstances, or doing what such person would not have done under circumstances.—*Kakos v. Byram*, 292 P. 909, 88 Mont. 309.—Neglig 233.

Mont. 1904. The simplest definition of "negligence" is absence of due care under the circumstances.—*Nord v. Boston & M. Consol. Copper & Silver Min. Co.*, 75 P. 681, 30 Mont. 48.

Neb. 1992. "Contributory negligence" is conduct for which plaintiff is responsible, amounting to breach of duty which law imposes upon persons to protect themselves from injury and which, concurring and cooperating with actionable negligence on part of defendant, contributes to injury, whereas "negligence" is defined as doing something that reasonably careful person would not do under similar circumstances or failing to do something that reasonably careful person would do under similar

circumstances.—*Kappenman v. Heule*, 486 N.W.2d 27, 241 Neb. 54.—*Neglig* 233, 502(2).

Neb. 1982. The word “accident” as used in liability insurance is more comprehensive term than “negligence,” and, in its common signification, means an unexpected happening without intention or design.—*Sullivan v. Great Plains Ins. Co.*, 317 N.W.2d 375, 210 Neb. 846.—*Insurance* 2275.

Neb. 1979. “Negligence” is doing something which an ordinary prudent person would not have done under similar circumstances or in failing to do something which an ordinary, prudent person would have done under similar circumstances.—*Brahatcek v. Millard School Dist., School Dist. No. 17*, 273 N.W.2d 680, 202 Neb. 86.—*Neglig* 232.

Neb. 1978. “Negligence” is doing something which an ordinarily prudent person would not have done under similar circumstances, or failing to do something which an ordinarily prudent person would have done under similar circumstances.—*Florida v. Farlee*, 266 N.W.2d 204, 201 Neb. 39.—*Neglig* 232.

Neb. 1973. “Accident” in liability insurance is more comprehensive term than “negligence” and commonly signifies unexpected happening without intention.—*City of Kimball v. St. Paul Fire & Marine Ins. Co.*, 206 N.W.2d 632, 190 Neb. 152.—*Insurance* 1825.

Neb. 1972. “Negligence” is doing something which ordinary, prudent person would not have done under similar circumstances or failing to do something which an ordinary, prudent person would have done under similar circumstances.—*Sacco v. Gau*, 199 N.W.2d 605, 188 Neb. 808.—*Neglig* 232.

Neb. 1971. “Negligence” is the doing of some act under the circumstances surrounding the accident involved, which a man of ordinary prudence would not have done, or the failure to do some act or to take some precaution which a man of ordinary prudence would have done or taken.—*Maxwell v. Lewis*, 186 N.W.2d 119, 186 Neb. 722.—*Neglig* 232.

Neb. 1967. “Negligence” is the doing of some act under the circumstances surrounding the accident involved, which a man of ordinary prudence would not have done, or the failure to do some act or to take some precaution which a man of ordinary prudence would have done or taken.—*Kozloski v. Modern Litho, Inc.*, 154 N.W.2d 460, 182 Neb. 270.—*Neglig* 232.

Neb. 1966. “Negligence” is the failure to do what reasonable and prudent persons would ordinarily have done under the circumstances and situation, or doing what reasonable and prudent persons under the existing circumstances would not have done.—*Farmer v. S. M. S. Trucking Co.*, 145 N.W.2d 922, 180 Neb. 779.—*Neglig* 233.

Neb. 1962. “Negligence” is the omission to do something which a reasonable and prudent man, guided by considerations which ordinarily regulate conduct of human affairs, would do or the doing of something which a reasonable, prudent man would not do and is the want of that degree of care that

an ordinarily prudent person would have exercised under the same circumstances.—*Reed v. Metropolitan Utilities Dist.*, 115 N.W.2d 453, 173 Neb. 854.—*Neglig* 233.

Neb. 1961. “Negligence” is doing of something which an ordinarily prudent person would not have done under same or similar circumstances, or failure to do something which ordinarily prudent person would have done under same or similar circumstances.—*Edmunds v. Ripley*, 112 N.W.2d 385, 172 Neb. 797.—*Neglig* 232.

Neb. 1961. “Negligence” is doing of something which an ordinarily prudent person would not have done under same or similar circumstances, or failure to do something which ordinarily prudent person would have done under same or similar circumstances.—*Niemeyer v. Forburger*, 112 N.W.2d 276, 172 Neb. 876.—*Neglig* 232.

Neb. 1960. “Negligence” is the omission to do something which a reasonable and prudent man, guided by considerations which ordinarily regulate conduct of human affairs, would do or the doing of something which a reasonable, prudent man would not do and is the want of that degree of care that an ordinarily prudent person would have exercised under the same circumstances.—*Turnell v. Mahlin*, 106 N.W.2d 693, 171 Neb. 513.—*Neglig* 233.

Neb. 1960. “Negligence” is doing of something which an ordinarily prudent person would not have done under same or similar circumstances, or failure to do something which ordinarily prudent person would have done under same or similar circumstances.—*Vermaas v. Heckel*, 102 N.W.2d 647, 170 Neb. 321.—*Neglig* 232.

Neb. 1959. “Negligence” is doing something an ordinarily prudent person would not have done under the same or similar circumstances, or failure to do something which an ordinarily prudent person would have done under the same or similar circumstances.—*Watson Bros. Transp. Co. v. Jacobson*, 97 N.W.2d 521, 168 Neb. 862.—*Neglig* 232.

Neb. 1959. “Negligence” is the omission to do something which a reasonable and prudent man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a reasonable, prudent man would not do; want of that degree of care that an ordinarily prudent person would have exercised under the same circumstances.—*Baer v. Schaap*, 97 N.W.2d 207, 168 Neb. 578, set aside on rehearing 106 N.W.2d 468, 171 Neb. 347, appeal dismissed 109 N.W.2d 724, 172 Neb. 414.—*Neglig* 233.

Neb. 1957. “Negligence” is doing of something which an ordinarily prudent person would not have done under same or similar circumstances, or failure to do something which ordinarily prudent person would have done under same or similar circumstances.—*Burhoop v. Brackhan*, 82 N.W.2d 557, 164 Neb. 382.—*Neglig* 232.

Neb. 1956. “Negligence” is doing of something which an ordinarily prudent person would not have done under same or similar circumstances, or failure to do something which ordinarily prudent per-

son would have done under same or similar circumstances.—*Wolcott v. Drake*, 75 N.W.2d 107, 162 Neb. 56.—Neglig 232.

Neb. 1954. "Negligence" is omission to do something which a reasonable man, guided by considerations ordinarily regulating conduct of human affairs, would do, or doing of something which a prudent and reasonable man would not do.—*Am-brozi v. Fry*, 62 N.W.2d 259, 158 Neb. 18.—Neglig 233.

Neb. 1953. "Negligence" is doing of something which an ordinarily prudent person would not have done under same or similar circumstances, or failure to do something which ordinarily prudent person would have done under same or similar circumstances.—*Shupe v. Antelope County*, 59 N.W.2d 710, 157 Neb. 374.—Neglig 232.

Neb. 1953. "Negligence" is a failure to do what reasonable and prudent persons would ordinarily have done under the circumstances and situation or doing what reasonable and prudent persons under the existing circumstances would not have done.—*Hilzer v. Farmers Irr. Dist.*, 56 N.W.2d 457, 156 Neb. 398.—Neglig 233.

Neb. 1952. "Negligence" is omission to do something which a reasonable man, guided by considerations ordinarily regulating conduct of human affairs, would do, or doing of something which a prudent and reasonable man would not do.—*Murray v. Pearson Appliance Store*, 54 N.W.2d 250, 155 Neb. 860.—Neglig 233.

Neb. 1951. Turning left across a public highway into private drive between intersections without looking to the rear within 200 feet before turning, though driver when some 500 feet from driveway had seen automobile approaching approximately $\frac{1}{2}$ mile behind him, constituted "negligence" as a matter of law. R.S.1943, § 39-7115.—*Petersen v. Schneider*, 46 N.W.2d 355, 153 Neb. 815, opinion supplemented 47 N.W.2d 863, 154 Neb. 303.—*Autos* 167(2).

Neb. 1949. "Negligence" is failure to exercise care of a reasonable and prudent person under a given set of circumstances.—*Thurow v. Schaeffer*, 38 N.W.2d 732, 151 Neb. 651.—Neglig 233.

Neb. 1948. An "assault and battery", being intentional, is not "negligence", which is unintentional.—*Newman v. Christensen*, 31 N.W.2d 417, 149 Neb. 471.—Neglig 201.

Neb. 1948. Action for injuries sustained when defendant playfully jerked plaintiff's right foot suddenly upward throwing him backwards out of his chair was an action for "negligence" subject to four-year statute of limitations, and not for "assault and battery" within one-year statute of limitations. R.S.1943, §§ 25-207, 25-208.—*Newman v. Christensen*, 31 N.W.2d 417, 149 Neb. 471.—*Lim* of Act 31.

Neb. 1948. "Negligence" is the failure to do that which an ordinarily prudent person would do or the doing of that which an ordinarily prudent person would not do under the same circum-

stances.—*Melcher v. Murphy*, 31 N.W.2d 411, 149 Neb. 541.—Neglig 232.

Neb. 1948. "Negligence" is the absence of care according to the circumstances.—*Melcher v. Murphy*, 31 N.W.2d 411, 149 Neb. 541.—Neglig 230.

Neb. 1947. The gist of "negligence" is failure to exercise the care of a reasonable and prudent person under a given set of circumstances.—*Fahrenbruch v. Peter Kiewit Sons' Co.*, 27 N.W.2d 680, 148 Neb. 460.—Neglig 233.

Neb. 1946. The employer's liability, under the Federal Employers' Liability Act, must be determined under the common-law rule defining "negligence" as lack of due care under the circumstances, or the failure to do what a reasonable and prudent man would have done, or doing what such a person would not have done under the existing circumstances. Federal Employers' Liability Act §§ 1, 3, and § 4 as amended in 1939, 45 U.S.C.A. §§ 51, 53, 54.—*Ellis v. Union Pac. R. Co.*, 22 N.W.2d 305, 147 Neb. 18.—*Emp Liab* 35.

Neb. 1944. "Negligence" is the failure to do that which an ordinarily prudent person would do or the doing of that which an ordinarily prudent person would not do under the same circumstances.—*McCullough v. Omaha Coliseum Corp.*, 12 N.W.2d 639, 144 Neb. 92.—Neglig 232.

Neb. 1943. "Negligence" being failure to do that which ordinarily prudent man would do or doing of that which such a man would not do under same circumstances, an ordinary custom, while relevant and admissible in evidence of negligence, is not conclusive thereof, especially where it is clearly a careless or dangerous custom.—*Tite v. Omaha Coliseum Corp.*, 12 N.W.2d 90, 144 Neb. 22, 149 A.L.R. 1164.—Neglig 236, 1631.

Neb. 1943. Instruction that "negligence" consists of some act or omission of duty that in ordinary and natural course of events "might" be a proximate cause of injury complained of, and that it is want of ordinary care and may consist in doing something that ought not to be done, or in not doing something which ought to be done, though not perfect because of use of quoted word, was not prejudicial.—*Harstick v. Beckenhauer*, 8 N.W.2d 834, 143 Neb. 179.—*App & E* 1064.4.

Neb. 1943. The violation of a statutory provision by motorist is not, in and of itself, "negligence" but may be taken into consideration, together with all other circumstances in case, to determine question of negligence.—*James v. Krebek*, 7 N.W.2d 637, 142 Neb. 757.—*Autos* 147.

Neb. 1942. Allegation in employer's petition on appeal from Compensation Court that disability of employee was due to employee's failure to allow normal recovery and not to the injury sustained and that had employee made effort to restore injured member to service his disability would be negligible constituted a charge of "negligence" on part of employee within meaning of provisions of Workmen's Compensation Act relating to defense of negligence. Comp.St.1929, §§ 48-102, 48-107.—

Rexroat v. State, 7 N.W.2d 163, 142 Neb. 596.—Work Comp 1919.

Neb. 1942. Generally it is "negligence" as a matter of law for motorist to drive automobile so fast on a highway at night that he cannot stop it in time to avoid a collision with an object within the area lighted by automobile lamps.—Fulcher v. Ike, 6 N.W.2d 610, 142 Neb. 418.—Autos 168(8).

Neb. 1942. The gist of "negligence" is failure to exercise the care of a reasonable and prudent person under a given set of circumstances.—Fulcher v. Ike, 6 N.W.2d 610, 142 Neb. 418.—Neglig 233.

Neb. 1942. The test of "negligence" is made by submission of the facts, if they are not admitted, and unless not more than one inference or conclusion may be drawn from the evidence, to a jury to determine whether the person charged with negligence failed to exercise the care, caution and prudence required of a reasonably, careful, cautious and prudent person under the given circumstances.—Fulcher v. Ike, 6 N.W.2d 610, 142 Neb. 418.—Neglig 1694.

Neb. 1942. "Negligence" is essentially relative and comparative, and what may be deemed ordinary care in one case may, under different surroundings and circumstances, be negligence, since the surrounding facts and circumstances are of controlling importance.—McClelland v. Interstate Transit Lines, 6 N.W.2d 384, 142 Neb. 439.—Neglig 232.

Neb. 1942. Where it is or should be apparent to a reasonable and prudent person that to pursue a certain course of conduct is likely to produce results injurious to others, the pursuit of such course of conduct is "negligence" and it is not necessary that the precise or particular result be foreseen.—McClelland v. Interstate Transit Lines, 6 N.W.2d 384, 142 Neb. 439.—Neglig 213.

Neb. 1942. "Negligence" is the absence of care according to the circumstances and is the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.—McClelland v. Interstate Transit Lines, 6 N.W.2d 384, 142 Neb. 439.—Neglig 233.

Neb. 1942. "Negligence" consists of doing what a reasonable and prudent person would not have done or in not doing what a reasonable and prudent person would have done under the circumstances.—Greco v. Shaver, 2 N.W.2d 526, 141 Neb. 1.—Neglig 233.

Neb. 1942. A person walking in roadway of highway is bound to use ordinary care to discover approaching motor vehicles, and his failure to do so is "negligence," but he is not "negligent" as matter of law in failing to turn about constantly and repeatedly to observe possible approach of such vehicles from behind him, especially where there is ample room for automobile to pass him.—Nichols v. Havlat, 1 N.W.2d 829, 140 Neb. 723, opinion set aside 7 N.W.2d 84, 142 Neb. 534.—Autos 218, 245(72).

Neb. 1942. One driving heavy truck and trailer at speed of 25 to 30 miles an hour at night when visibility to his front was wholly destroyed by blinding headlights of oncoming automobile violated rule of due care and requirement that motor vehicle shall not be driven so rapidly that it cannot be stopped within area rendered visible to driver by headlights and was guilty of "negligence" as matter of law in colliding with pedestrian first seen by driver within two or three feet of truck at instant when it came abreast of oncoming automobile.—Nichols v. Havlat, 1 N.W.2d 829, 140 Neb. 723, opinion set aside 7 N.W.2d 84, 142 Neb. 534.—Autos 168(9).

Neb. 1941. Failure within a reasonable time to clear a highway of dangerous articles left thereon, or reasonably to warn of a dangerous condition, is actionable "negligence".—Swinford v. Finck, 299 N.W. 227, 139 Neb. 886.—High 194, 195.

Neb. 1941. Generally, it is "negligence" as a matter of law for motorist to drive an automobile so fast on a highway at night that he cannot stop in time to avoid a collision with an object within the area lighted by his lamps, but the rule has no application where the object is of such a character or color that it cannot be observed by the exercise of ordinary care in time to avoid a collision.—Swinford v. Finck, 299 N.W. 227, 139 Neb. 886.—Autos 286.

Neb. 1941. If owner of truck, from which endgate had fallen onto the highway, failed within a reasonable length of time to clear the highway of the endgate or failed reasonably to warn of the dangerous condition of the highway, he was guilty of "negligence" which would entitle motorist to damages for personal injuries sustained when automobile struck the endgate.—Swinford v. Finck, 299 N.W. 227, 139 Neb. 886.—Autos 290.

Neb. 1941. "Negligence" consists of doing what a reasonable and prudent person would not have done or in not doing what a reasonable and prudent person would have done under the existing circumstances.—Blanton v. Michael, Swanson & Brady Produce Co., 295 N.W. 883, 138 Neb. 883.—Neglig 233.

Neb. 1940. "Negligence" is the omission to do something which a reasonable and prudent man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or the doing of something which a reasonable, prudent man would not do, and is the want of that degree of care that an ordinarily prudent person would have exercised under the same circumstances.—Bohmont v. Moore, 295 N.W. 419, 138 Neb. 784, 133 A.L.R. 270, rehearing denied 297 N.W. 559, 138 Neb. 907, 133 A.L.R. 279.—Neglig 233.

Neb. 1940. "Negligence" consists of the doing of some act under circumstances surrounding an accident that a man of ordinary prudence would not have done, or the failure to do some act or take some precaution which a man of ordinary prudence would have done or taken.—Meyers v. Neeld, 289 N.W. 797, 137 Neb. 428.—Neglig 232.

Neb. 1939. The term "negligence" is merely a convenient term under which to group a failure to conform to standards of conduct insisted on by society.—*Watenpaugh v. L.L. Coryell & Son*, 283 N.W. 204, 135 Neb. 607.—Neglig 230.

Neb. 1939. "Negligence," in reference to the kindling or management of a fire, means the doing of some act, under the circumstances surrounding the fire involved, which a man of ordinary prudence would not have done, or the failure to do some act or to take some precaution which a man of ordinary prudence would have done or taken.—*Watenpaugh v. L.L. Coryell & Son*, 283 N.W. 204, 135 Neb. 607.—Neglig 341.

Neb. 1938. "Negligence" is a failure to do what reasonable and prudent persons would ordinarily have done under the circumstances and situation, or the doing what reasonable and prudent persons under the existing circumstances would not have done.—*Eaton v. Merritt*, 281 N.W. 620, 135 Neb. 363.—Neglig 233.

Neb. 1933. "Nuisance" is a violation of an absolute duty, while "negligence" is failure to use the degree of care required in the particular circumstances—a violation of relative duty; in other words, a nuisance may be created or maintained with the highest degree of care, and the negligence of a defendant, unless in exceptional cases, is not material.—*Toft v. City of Lincoln*, 250 N.W. 748, 125 Neb. 498.

Neb. 1916. As a general rule "negligence" may consist of the neglect of some duty imposed by statute as well as of the careless or negligent performance of some obligation imposed by law or contract.—*Walker v. Klopp*, 157 N.W. 962, 99 Neb. 794, L.R.A. 1916E, 1292.

Neb. 1905. "Negligence" is defined as a want of that care which a man of common prudence and of common sense ordinarily exercises in like employment. To constitute it, there must be a disregard of some duty or rule of conduct prescribed beforehand, or arising so manifestly from the facts as to leave no doubt of its existence, and it is of the essence of actionable negligence that the party charged should have knowledge that the act complained of was such an act of omission or commission as might, within the domain of probability, cause some such an injury as that complained of.—*Lincoln Gas & Electric Light Co. v. Thomas*, 104 N.W. 153, 74 Neb. 257.

Neb. 1903. "Negligence" is a failure to do what reasonable and prudent persons would ordinarily have done under the circumstances and situations.—*L.W. Pomerene Co. v. White*, 97 N.W. 232, 70 Neb. 171, modified on rehearing *Pomerene Co. v. White*, 98 N.W. 1040, 70 Neb. 177.

Neb.App. 2000. "Negligence" is defined as a failure to do what reasonable and prudent persons would ordinarily have done, or not done, under the circumstances.—*Bates v. Design of the Times, Inc.*, 610 N.W.2d 41, 9 Neb.App. 260, review sustained, reversed 622 N.W.2d 684, 261 Neb. 332.—Neglig 233.

Neb.App. 1997. "Negligence" is doing something, or failing to do something, which ordinarily prudent person would do, or not do, under circumstances.—*State v. Parks*, 565 N.W.2d 734, 5 Neb. App. 814, review sustained, reversed 573 N.W.2d 453, 253 Neb. 939.—Crim Law 23.

Nev. 1971. "Negligence" is failure to exercise that degree of care in a given situation which a reasonable man under similar circumstances would exercise.—*Driscoll v. Erreguible*, 482 P.2d 291, 87 Nev. 97.—Neglig 233.

N.H. 1964. By itself, incurrance of a known danger is not legal equivalent of "negligence," and there is no fault if known danger is carefully incurred.—*Wright v. Connecticut Val. Elec. Co.*, 206 A.2d 103, 106 N.H. 113.—Neglig 506(8).

N.H. 1942. In action for employee's injuries resulting from employer's negligence, a charge that "negligence" is the failure to use as much care as ordinary persons of average prudence would have shown in a similar situation and under same circumstances was not erroneous because of inclusion of word "prudence".—*Nason v. Lord-Merrow Excelsior Co.*, 29 A.2d 464, 92 N.H. 251.—Emp Liab 269.1.

N.H. 1942. Ordinarily, due care does not require that one anticipate careless or illegal conduct of others, in absence of notice thereof, but a motorist is charged with knowledge that other motorists and pedestrians do not always conduct themselves with due care and in accordance with law, and if the probability of encountering danger on account of such careless or illegal conduct is sufficient to induce the ordinary person to prepare to meet it, failure to be thus prepared constitutes "negligence".—*Fine v. Parella*, 25 A.2d 121, 92 N.H. 81.—Autos 206.

N.H. 1941. Where knowledge is necessary to careful conduct, voluntary ignorance is equivalent to "negligence".—*Prokey v. Hamm*, 23 A.2d 327, 91 N.H. 513.—Neglig 251.

N.H. 1941. Unexplained skidding of automobile does not indicate "negligence", but, when there are conditions within motorist's control which may be found accountable for the skidding, careless control becomes causal of the loss of control, and, if it may be found from other evidence than the event that due care would have avoided the skidding, liability of motorist follows without resort to formula of *res ipsa loquitur*.—*Wiggin v. Kingston*, 20 A.2d 625, 91 N.H. 397.—Autos 168(1).

N.H. 1941. The possibility that injury may result from an act of omission is sufficient to give quality of "negligence" to act or omission, but that possibility is insufficient to give rise to a cause of action unless there has been an injury.—*White v. Schnoebelen*, 18 A.2d 185, 91 N.H. 273.—Neglig 460.

N.H. 1939. "Negligence" may consist in defendant's failure to anticipate effect of his conduct on conduct of others.—*Bouley v. Tilo Roofing Co.*, 10 A.2d 219, 90 N.H. 402.—Neglig 213.

N.H. 1936. Causal violation of statute and causal violation of common-law standard of due care are both "legal faults," but only violation of common-law standards of due care is "negligence."—Frost v. Stevens, 184 A. 869, 88 N.H. 164.—Neglig 231, 259.

N.H. 1934. "Negligence" is not thing, but relation, and "legal negligence" is failure to perform duty law imposes on one person for benefit of another.—Sweeney v. Boston & M.R.R., 174 A. 676, 87 N.H. 90, affirmed 175 A. 243, 87 N.H. 90, certiorari denied 55 S.Ct. 638, 294 U.S. 728, 79 L.Ed. 1258.—Neglig 214.

N.H. 1931. Law of "negligence" is founded on reasonable conduct or reasonable care under all circumstances of particular case.—Charbonneau v. MacRury, 153 A. 457, 84 N.H. 501, 73 A.L.R. 1266.—Infants 61.

N.H. 1930. Incurrence of known danger is not legal equivalent of "negligence."—Piatek v. Swindell, 151 A. 262, 84 N.H. 402.—Neglig 506(8).

N.H. 1924. "Negligence" is breach of duty to use care, and, if there is no duty, there is no negligence.—Stevens v. City of Manchester, 127 A. 873, 81 N.H. 369.

N.H. 1913. The ordinary act of "negligence" has in it no element of moral turpitude and there need be no purpose to commit a wrong as to any one, nor a conscious remissness in legal duty.—Garland v. Boston & M.R.R., 86 A. 141, 76 N.H. 556, 46 L.R.A.N.S. 338, Am. Ann. Cas. 1913E, 924.

N.H. 1908. "Negligence" is doing what the ordinary man is not accustomed to do, not what he is in the habit of doing.—Goodale v. York, 69 A. 525, 74 N.H. 454.

N.H. 1906. In conducting the affairs of a hospital, its officers and agents are as liable to commit acts of negligence as are the officers and agents of a railroad or other business corporation. Men in general are not uniformly careful. Experience shows that "negligence"—the failure to exercise ordinary care—is to be expected when men engage in industrial pursuits. It may, not inappropriately, be said to be necessarily incidental in the accomplishment of most practical results through the agency of man.—Hewett v. Woman's Hospital Aid Ass'n, 64 A. 190, 73 N.H. 556, 7 L.R.A.N.S. 496.

N.H. 1903. "Negligence" is the want of ordinary care, or such care as persons of average prudence would exercise under the same circumstances. A mere error in judgment is not necessarily negligence.—Carney v. Concord St. Ry., 57 A. 218, 72 N.H. 364.

N.J. 2001. "Negligence" is conduct which falls below the standard established by law for the protection of others against an unreasonable risk of harm. Restatement (Second) of Torts § 282.—Pfenninger v. Hunterdon Central Regional High School, 770 A.2d 1126, 167 N.J. 230.—Neglig 233.

N.J. 2001. "Recklessness," unlike "negligence," requires a conscious choice of a course of action, with knowledge or a reason to know that it will

create serious danger to others.—Schick v. Ferolito, 767 A.2d 962, 167 N.J. 7.—Neglig 274.

N.J. 2001. "Negligence" may consist of an intentional act done with knowledge that it creates a risk of danger to others, but "recklessness" requires a substantially higher risk.—Schick v. Ferolito, 767 A.2d 962, 167 N.J. 7.—Neglig 200, 274.

N.J. 1957. Under section of Federal Employers' Liability Act providing that a railroad engaged in interstate commerce shall be liable for injury to or death of its employees resulting in whole or in part from the negligence of any employee of such carrier "negligence" embraces an assault and battery, and a railroad must respond if an assault and battery is committed by an employee in the scope of his employment with the purpose of furthering railroad's business. Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51.—Gibson v. Kennedy, 128 A.2d 480, 23 N.J. 150.—Emp Liab 114.

N.J. 1956. Conduct which involves an unreasonably great risk of causing damage, or which falls below the standard established by law for the protection of others against unreasonably great risk of harm constitutes "negligence."—Harpell v. Public Service Coordinated Transport, 120 A.2d 43, 20 N.J. 309.—Neglig 233.

N.J. Err. & App. 1941. "Negligence" is a fact which must be proved and will never be presumed, and proof of the occurrence of an accident does not raise a presumption of negligence.—Grugan v. Shore Hotels Finance & Exchange Corp., 18 A.2d 29, 126 N.J.L. 257.

N.J. Err. & App. 1939. "Active wrongdoing" for which municipality is amenable to private action is a wrongful act or positive "misfeasance" of municipality which is wrongful in itself and detrimental to the plaintiff as distinguished from mere "negligence."—Robinson v. Township of Ocean, 9 A.2d 300, 123 N.J.L. 525.—Mun Corp 723.

N.J. Err. & App. 1915. Where "negligence" arises out of an act of commission by one for whose conduct another is responsible it must be with reference to some duty which the responsible person owed to the party injured.—Hulley v. Moosbrugger, 95 A. 1007, 88 N.J.L. 161.—Neglig 210.

N.J. Err. & App. 1915. "Negligence" is relative term depending on varying circumstances.—Buchanan & Smock Lumber Co. v. Einstein, 93 A. 716, 87 N.J.L. 307.

N.J. Err. & App. 1909. "Negligence" is a relative term, to be determined on the facts of each case.—Quinn v. West Jersey & S.R. Co., 74 A. 456, 78 N.J.L. 539, 49 Vroom 539.

N.J. Err. & App. 1908. "Negligence" in its essence is always concrete. Hence its proof must always rest upon testimony that tends to the establishment of concrete acts either of omission or of commission. There is no such thing as negligence at large.—Wyckoff v. Birch, 71 A. 243, 76 N.J.L. 646, 47 Vroom 646.

N.J. Super. A.D. 1964. "Negligence" excludes design and is a failure to use that degree of care

which a man of ordinary prudence would have used under similar circumstances.—*LoRocco v. New Jersey Mfrs. Indem. Ins. Co.*, 197 A.2d 591, 82 N.J.Super. 323, certification denied 199 A.2d 655, 42 N.J. 144.—Neglig 201, 232.

N.J.Super.A.D. 1960. "Negligence" is conduct which falls below standard established by law for protection of others against unreasonable risk of harm.—*McKinley v. Slenderella Systems of Camden, N. J., Inc.*, 165 A.2d 207, 63 N.J.Super. 571, 88 A.L.R.2d 1101.—Neglig 233.

N.J.Super.A.D. 1953. "Negligence" conveys idea of inadvertence as distinguished from premeditation or formed intention.—*Wegiel v. Hogan*, 100 A.2d 349, 28 N.J.Super. 144.—Neglig 201.

N.J.Super.A.D. 1953. Where one, with reckless indifference to consequences, performs a deliberate act in face of known circumstances and high degree of probability of producing harm, the law imputes a constructive intention to inflict injuries resulting therefrom and stamps act as "willfully injurious" rather than as mere "negligence".—*Wegiel v. Hogan*, 100 A.2d 349, 28 N.J.Super. 144.—Neglig 275.

N.J.Super.A.D. 1951. "Negligence" is not imaginative notion and it denotes elements of factuality.—*Gaffney v. America on Wheels*, 85 A.2d 1, 16 N.J.Super. 484.—Neglig 200.

N.J.Super.A.D. 1951. "Negligence" and "willfulness" are mutually exclusive terms which imply radically different mental states in that negligence conveys idea of inadvertence as distinguished from premeditation or formed intention which is component part of willfulness.—*King v. Patrylow*, 83 A.2d 639, 15 N.J.Super. 429.—Neglig 201, 275.

N.J.Sup. 1943. Danger of damage or injury reasonably to be foreseen at the time of acting is an established test of "negligence".—*Swenson v. Nairn*, 30 A.2d 897, 21 N.J.Misc. 70.—Neglig 213.

N.J.Sup. 1943. "Conversion" can only result from intentional conduct, whereas "negligence" is not such conduct.—*Gunther v. Morey Larue Laundry Co.*, 29 A.2d 713, 129 N.J.L. 345, affirmed 33 A.2d 893, 130 N.J.L. 557.—Neglig 201; Trover 3.

N.J.Sup. 1941. The operation of a manufacturing plant in such manner as to injure others is an act of "negligence" which results in a "nuisance" for which the wrongdoer is responsible.—*Garfield Box Co. v. Clifton Paper Board Co.*, 17 A.2d 588, 125 N.J.L. 603.—Nuis 3(5).

N.J.Super.L. 1985. "Negligence" is conduct which falls below standard recognized by law as essential to protection of others from unreasonable risks of harm.—*Montague v. Petit-Clair*, 496 A.2d 393, 203 N.J.Super. 210.—Neglig 233.

N.J.Ch. 1917. Apart from any willful act, "negligence" for which person can be held responsible is performance of act which under all circumstances he is bound not to perform, or nonperformance of act which under all circumstances he is bound to perform.—*Four Corners Bldg. & Loan Ass'n v. Schwarzwaelder*, 101 A. 564, 88 N.J.Eq. 212, re-

versed 103 A. 240, 88 N.J.Eq. 545, 3 A.L.R. 1053.—Neglig 230.

N.M. 1983. "Negligence" encompasses concepts of foreseeability of harm to the person injured and of duty of care toward that person.—*Ramirez v. Armstrong*, 673 P.2d 822, 100 N.M. 538.—Neglig 210, 387.

N.M. 1961. "Negligence" in its broad sense includes the element of liability, but when used in its narrow sense, the element of liability is excluded.—*Lopez v. Heesen*, 365 P.2d 448, 69 N.M. 206.—Neglig 200.

N.M. 1957. The creation or maintenance of a "nuisance" is the violation of an absolute duty, the doing of an act which is wrongful in itself, whereas "negligence" is the violation of a relative duty, the failure to use the degree of care required under particular circumstances in connection with act or omission which is not of itself wrongful.—*Huntsman v. Smith*, 312 P.2d 103, 62 N.M. 457.—Neglig 210; Nuis 1.

N.M. 1956. "Negligence" consists in conduct which common experience or special knowledge of the actor shows to be so likely to produce the result complained of, under circumstances known to the actor, that he is held answerable for that result although it was not certain, intended or foreseen.—*Padilla v. Atchison, T. & S.F. Ry. Co.*, 295 P.2d 1023, 61 N.M. 115.—Neglig 213.

N.M. 1918. Ordinarily "incompetency" relates to incapacity, either physical or mental, to perform the act in question, while "negligence" ordinarily implies the ability and competency to do the act in question, accompanied by a failure and neglect to properly perform the same.—*Morstad v. Atchison, T. & S. F. Ry. Co.*, 170 P. 886, 23 N.M. 663.—Neglig 200.

N.M. 1916. "Negligence," whether slight, ordinary or gross, is still negligence, and is negative in its nature implying the omission of duty, and excludes the idea of willfulness. When "willfulness" is an element in the conduct of the party charged, the case ceases to be one of negligence.—*Thayer v. Denver & R. G. R. Co.*, 154 P. 691, 21 N.M. 330.

N.M.App. 1972. "Negligence" encompasses within its meaning the concepts of foreseeability of harm to the person injured and of the duty to use ordinary care.—*Latimer v. City of Clovis*, 495 P.2d 788, 83 N.M. 610.—Neglig 210, 213.

N.M.App. 1971. Factor which distinguishes "negligence" from "heedlessness" or "reckless disregard" for purpose of guest statute is a particular state of mind; to be heedless or reckless, evidence must show that particular state of mind was one of utter irresponsibility or conscious abandonment of any consideration for safety of guests. 1953 Comp. § 64-24-1.—*Valencia v. Dixon*, 488 P.2d 120, 83 N.M. 70, certiorari denied 488 P.2d 107, 83 N.M. 57.—Autos 181(1).

N.Y. 1990. Finding of general contractor's liability to injured worker under the scaffolding law was not the equivalent of a finding of "negligence"

for purposes of statute voiding agreements purporting to indemnify contractors against liability for injuries contributed to by their negligence; in the absence of finding of negligence of the contractor, it was entitled to enforce indemnity agreement in subcontract with respect to injuries suffered by employee of sub-subcontractor. *McKinney's Labor Law* § 240, subd. 1; *McKinney's General Obligations Law* § 5-322.1.—*Brown v. Two Exchange Plaza Partners*, 556 N.Y.S.2d 991, 76 N.Y.2d 172, 556 N.E.2d 430.—*Indem* 30(5).

N.Y. 1950. "Negligence" is failure to employ reasonable care, the care which the law's reasonably prudent man should use under circumstances of a particular case.—*McLean v. Triboro Coach Corporation*, 96 N.E.2d 83, 302 N.Y. 49.—*Neglig* 233.

N.Y. 1944. "Negligence" arises from breach of duty and is relative to time, place and circumstances.—*Sadowski v. Long Island R. Co.*, 55 N.E.2d 497, 292 N.Y. 448, on remand 50 N.Y.S.2d 171, 268 A.D. 777.—*Neglig* 250.

N.Y. 1943. A person's failure to observe some duty of care or precaution owing to another, generally or specifically, constitutes "negligence", which gives rise to cause of action for resulting injury to such other, but it should be established by direct evidence or clear inferences from facts and cannot rest on conjecture simply.—*Halverson v. 562 West 149th Street Corporation*, 47 N.E.2d 685, 290 N.Y. 40, motion granted 49 N.E.2d 626, 290 N.Y. 670.—*Neglig* 250, 1655.

N.Y. 1939. The omission by a plaintiff of a safeguard prescribed by statute against a recognized danger constitutes "negligence" as a matter of law which bars recovery for damages caused by incidence of the danger for which the safeguard was prescribed.—*Tedla v. Ellman*, 19 N.E.2d 987, 280 N.Y. 124.—*Neglig* 525, 547.

N.Y. 1939. "Negligence" is the failure to exercise the care required by law.—*Tedla v. Ellman*, 19 N.E.2d 987, 280 N.Y. 124.—*Neglig* 230.

N.Y. 1939. Failure to observe the standard of care imposed by statute is "negligence" as a matter of law.—*Tedla v. Ellman*, 19 N.E.2d 987, 280 N.Y. 124.—*Neglig* 259.

N.Y. 1935. Under *Gen.St.Conn.*1930, § 1628, precluding a nonpaying guest's recovery against the owner or operator of an automobile in which the guest is riding at the time of an accident, unless the accident was intentional on the part of the owner or operator, or caused by his "heedlessness or reckless disregard of the rights of others," the liability of the operator is limited to cases where he is guilty of intentional misconduct, or where he acted in heedless and reckless disregard of the rights of the passenger, and this contemplates something more than mere "negligence"—the failure to exercise the care of a reasonably prudent person under the circumstances.—*Metcalf v. Reynolds*, 195 N.E. 681, 267 N.Y. 52, reargument denied 198 N.E. 372, 268 N.Y. 495.

N.Y. 1932. In prosecution for reckless driving, mere collision of automobiles was insufficient to

prove "negligence". *Vehicle and Traffic Law*, § 58.—*People v. Grogan*, 183 N.E. 273, 260 N.Y. 138, 86 A.L.R. 1266.—*Autos* 355(4).

N.Y. 1928. Negligence is absence of care according to circumstances. "Negligence" is the absence of care according to the circumstances.—*Palsgraf v. Long Island R. Co.*, 162 N.E. 99, 248 N.Y. 339, 59 A.L.R. 1253, reargument denied 164 N.E. 564, 249 N.Y. 511, 59 A.L.R. 1253.—*Neglig* 1.

N.Y. 1928. "Negligence" is the absence of care according to the circumstances.—*Palsgraf v. Long Island R. Co.*, 162 N.E. 99, 248 N.Y. 339, 59 A.L.R. 1253, reargument denied 164 N.E. 564, 249 N.Y. 511, 59 A.L.R. 1253.—*Neglig* 230.

N.Y. 1915. "Negligence" is a failure to use the degree of care required in the particular circumstances—a violation of a relative duty.—*Herman v. City of Buffalo*, 108 N.E. 451, 214 N.Y. 316.—*Neglig* 230.

N.Y. 1913. A depositor owes his bank the duty of making some examination and verification of his accounts with the bank when the passbook and vouchers are returned, "negligence" in such case meaning the failure to do those things dictated by ordinary business customs and prudence; and hence where a trusted bookkeeper of a depositor made the deposits and had the custody of the passbook, and when it was returned for balance took out the checks which he had forged and the check list and delivered it to the depositor with only the genuine checks, and where the depositor, knowing the custom of balancing the passbook and returned vouchers and having a reasonable opportunity for examination, only compared the checks with the stubs without having the check list or examining the balances shown by the passbook or the interest credits, any of which would have disclosed the payment of forged checks, he did not exercise reasonable care in examining and verifying the passbook and the returned vouchers as a protection against the bank's payment of forged checks, so that the bank was not liable for repayment of the amounts paid on such forged checks.—*Morgan v. United States Mortgage & Trust Co.*, 101 N.E. 871, 208 N.Y. 218.

N.Y. 1905. The distinction between "negligence" and intentional wrong, as relating to the liability for the sale of dangerous or harmful articles is important as bearing on the civil liability for consequences for injuries. If a vendor sell a machine, knowing it defective and dangerous, he is liable; but, if he sell without knowledge of the defect or danger, he is not liable, though he be careless or negligent.—*Kuelling v. Roderick Lean Mfg. Co.*, 75 N.E. 1098, 183 N.Y. 78.

N.Y.A.D. 1 Dept. 1963. "Culpable" means "blamable" and involves breach of legal duty or commission of fault, and when used in conjunction with term "negligence", it implies wanton disregard of rights of others by failure to exercise that degree of care called for by circumstances.—*Application of Martinis*, 244 N.Y.S.2d 949, 20 A.D.2d 79, reversed *Martinis v. Supreme Court*, 258 N.Y.S.2d 65, 15 N.Y.2d 240, 206 N.E.2d 165.—*Neglig* 275.

N.Y.A.D. 1 Dept. 1962. Considering skill of players, rules, and nature of particular game, and risk which normally attends it, a participant's conduct may amount to such careless disregard for safety of others as to create risks not fairly assumed, but what the scorekeeper may regard as an "error" is not the equivalent in law of "negligence".—*McGee v. Board of Ed. of City of New York*, 226 N.Y.S.2d 329, 16 A.D.2d 99, appeal dismissed 240 N.Y.S.2d 165, 12 N.Y.2d 1100, 190 N.E.2d 537, appeal denied 240 N.Y.S.2d 242, 19 A.D.2d 526, appeal denied 243 N.Y.S.2d 1025, 13 N.Y.2d 596, 193 N.E.2d 644.—*Neglig* 565.

N.Y.A.D. 1 Dept. 1940. Cause of action pleaded by passenger alleging she entered bus and paid fare and that contract for transportation was made, and that thereafter she signaled bus operator to stop and in violation of contract operator failed to control other passengers and permitted them to stand in aisle, and brought bus to sudden stop, causing passenger to fall to floor, with other passengers thrown on top of her, and that carrier's conduct was in violation of contract to carry passenger safely to destination, was barred by three-year statute of limitations as being based on "negligence," and not on "contract." Civil Practice Act, § 49.—*Loehr v. East Side Omnibus Corp.*, 18 N.Y.S.2d 529, 259 A.D. 200, affirmed 39 N.E.2d 290, 287 N.Y. 670.—*Lim* of Act 31.

N.Y.A.D. 1 Dept. 1939. The existence of a space of 11 inches between subway car and station platform was not of itself "negligence" if necessary in proper operation of railroad but negligence could arise if passengers were not reasonably protected from danger.—*Iorio v. Murray*, 10 N.Y.S.2d 492, 256 A.D. 512.—*Carr* 286.

N.Y.A.D. 2 Dept. 1968. "Negligence" and "fraud" are not synonymous or legally equivalent terms, although in a proper case negligence may be so gross as to take the place of a deliberate intention to work a fraud.—*Moser v. Spizzirro*, 295 N.Y.S.2d 188, 31 A.D.2d 537, affirmed 305 N.Y.S.2d 153, 25 N.Y.2d 941, 252 N.E.2d 632.—*Fraud* 1; *Neglig* 201.

N.Y.A.D. 2 Dept. 1939. A city was not liable for injuries received by pedestrian when he slipped on accumulation of oil and grease on a roadway at point other than crosswalk due to drippings from busses, since such accumulation did not constitute condition of actionable "negligence" on part of city. Greater New York Charter, § 383, 2d subd., par. 1.—*Carr v. City of New York*, 12 N.Y.S.2d 407, 257 A.D. 849, reversed 24 N.E.2d 130, 281 N.Y. 469.—*Mun Corp* 767.

N.Y.A.D. 2 Dept. 1938. The test of actionable negligence is not what could have been done to prevent a particular accident, but what a reasonably prudent and careful person would have done under circumstances in discharge of his duty to injured party, and a failure to guard against a remote possibility of accident, or one which could not in exercise of ordinary care, be foreseen, does not constitute "negligence."—*Wildman v. City of New*

York, 3 N.Y.S.2d 37, 254 A.D. 591, appeal denied 18 N.E.2d 323, 279 N.Y. 706.—*Neglig* 213, 387.

N.Y.A.D. 2 Dept. 1911. "Negligence" is not absolute or intrinsic, but is always relevant to some circumstance of time, place, or person.—*Connell v. New York Cent. & H.R.R. Co.*, 129 N.Y.S. 666, 144 A.D. 664.

N.Y.A.D. 2 Dept. 1907. "Negligence" is the violation of duty by omission or commission, which creates a menace, and when it becomes effective by causing injury to a blameless person liability follows.—*Birch v. City of New York*, 106 N.Y.S. 104, 121 A.D. 395, reversed 83 N.E. 51, 190 N.Y. 397, 18 L.R.A.N.S. 595.

N.Y.A.D. 2 Dept. 1906. "Negligence" is the absence of reasonable care. What is reasonable care depends on the conditions of danger or lack of danger. In some cases very little care suffices to fulfill the rule of reasonable care, while in others the highest degree of care is required to do so.—*Warth v. Kastner*, 100 N.Y.S. 279, 37 Civ.Proc. Rep. 209, 114 A.D. 766.

N.Y.A.D. 3 Dept. 1993. Physician's record-keeping violations can constitute "negligence," within meaning of disciplinary rule, if there is relationship between physician's inadequate record-keeping and physician's treatment of patients; however, record-keeping violation which does not affect patient treatment will not constitute "negligence." McKinney's Education Law § 6530, subds. 3, 32.—*Bogdan v. New York State Bd. for Professional Medical Conduct*, 606 N.Y.S.2d 381, 195 A.D.2d 86, appeal dismissed, leave to appeal denied 614 N.Y.S.2d 381, 83 N.Y.2d 901, 637 N.E.2d 272.—*Health* 206.

N.Y.A.D. 3 Dept. 1987. "Negligence" consists of breach of duty of care owed to another.—*Di Cerbo by Di Cerbo v. Raab*, 516 N.Y.S.2d 995, 132 A.D.2d 763.—*Neglig* 250.

N.Y.A.D. 3 Dept. 1973. "Negligence" is a failure to perform, or the improper performance of a legal duty which results in injury to another.—*Holodook v. Spencer*, 350 N.Y.S.2d 199, 43 A.D.2d 129, affirmed 364 N.Y.S.2d 859, 36 N.Y.2d 35, 324 N.E.2d 338.—*Neglig* 250.

N.Y.A.D. 3 Dept. 1969. "Negligence" is conduct which falls below standard established by law for protection of others against unreasonable risk and necessarily involves a foreseeable risk, a threatened danger of injury, and conduct unreasonable in proportion to the danger.—*Morris v. Troy Sav. Bank*, 302 N.Y.S.2d 51, 32 A.D.2d 237, affirmed 320 N.Y.S.2d 78, 28 N.Y.2d 619, 268 N.E.2d 805.—*Neglig* 233.

N.Y.A.D. 3 Dept. 1941. The state, having permitted a student at state normal school to be in auditorium on second floor of school building after 5 o'clock in the evening for purpose of attending a musical rehearsal, which was an extra-curricular activity, was under a duty to provide a safe exit for such student, and the failure to illuminate the hall and stairway together with omission of handrail along a portion of the wall at left-hand side of

stairway constituted "negligence," rendering the state liable for injuries sustained by student, who fell while groping in the dark for handrail at the point where such rail had been omitted.—*Hovey v. State*, 27 N.Y.S.2d 195, 261 A.D. 759, 262 A.D. 791, affirmed 39 N.E.2d 287, 287 N.Y. 663.—*Schools* 89.5(1).

N.Y.A.D. 3 Dept. 1937. The failure of state employee to replace decayed posts in barrier along highway where it passed dangerous gorge when fact that barrier was decayed was obvious to casual observer constituted actionable "negligence" rendering state liable for injuries received by children when automobile in which they were riding skidded on icy highway and went through barrier.—*Countryman v. State*, 297 N.Y.S. 771, 251 A.D. 509, affirmed 13 N.E.2d 782, 277 N.Y. 586.—*Autos* 278; *Death* 84.

N.Y.A.D. 3 Dept. 1937. Where failure of state employee to replace decayed posts in barrier along highway where it passed dangerous gorge when fact that barrier was decayed was obvious to casual observer constituted actionable "negligence," state was liable for money extended by husband in connection with burial of wife who was killed in such accident.—*Countryman v. State*, 297 N.Y.S. 771, 251 A.D. 509, affirmed 13 N.E.2d 782, 277 N.Y. 586.—*Death* 84.

N.Y.A.D. 3 Dept. 1909. Failure to guard against that which has never occurred and which is very unlikely to occur, and which does not naturally suggest itself to prudent men as something which should be guarded against, is not "negligence."—*Ryan v. Cortland Carriage Goods Co.*, 118 N.Y.S. 56, 133 A.D. 467.

N.Y.A.D. 4 Dept. 1994. Attorney's failure to file financing statement in manner required by law to perfect his or client's security interest constitutes "negligence" or "malpractice" as matter of law. *McKinney's Uniform Commercial Code* §§ 9-302, 9-401(1)(c).—*Deb-Jo Const., Inc. v. Westphal*, 620 N.Y.S.2d 678, 210 A.D.2d 951.—*Atty & C* 129(3).

N.Y.A.D. 4 Dept. 1935. Engineer's failure to exercise best judgment in an effort to avoid railroad crossing collision would not constitute "negligence."—*Lee v. Pennsylvania R. Co.*, 280 N.Y.S. 285, 244 A.D. 558, reversed 198 N.E. 629, 269 N.Y. 53, reargument denied *In re Lee's Estate*, 200 N.E. 52, 269 N.Y. 674, motion to amend remittitur denied 1 N.E.2d 364, 270 N.Y. 629.—*R R* 309.

N.Y.Sup. 1997. Requisite elements of cause of action in "negligence" are duty on part of defendants to conform to certain standard of conduct with respect to plaintiff, failure by defendant to so conform, and reasonably close causal connection, or proximate cause, between defendant's conduct and some resulting injury to plaintiff.—*Cresser v. American Tobacco Co.*, 662 N.Y.S.2d 374, 174 Misc.2d 1.—*Neglig* 202.

N.Y.Sup. 1995. "Negligence," for purposes of statute providing that negligence in use or operation of motor vehicle may be attributable to its owner if it is being operated with owner's permis-

sion and consent, includes gross negligence and reckless acts. *McKinney's Vehicle and Traffic Law* § 388.—*Lynch-Fina v. Paredes*, 627 N.Y.S.2d 255, 164 Misc.2d 963.—*Autos* 192(1).

N.Y.Sup. 1967. Word "innocent" as used in the Motor Vehicle Accident Indemnification Corporation Law providing for recompense for "innocent victims" of motor vehicle accidents will not be equated with "immorality" and "criminality," but it does not exclude "negligence," and the scope of the Law is not to give any recompense to a wrongdoer as an "innocent victim." *Insurance Law*, § 600 et seq.—*Hilton v. Motor Vehicle Acc. Indemnification Corp.*, 279 N.Y.S.2d 902, 53 Misc.2d 823, affirmed 286 N.Y.S.2d 454, 29 A.D.2d 630.—*Autos* 251.3.

N.Y.Sup. 1963. "Negligence" is the failure to use that due care which the circumstances require.—*Richardson v. Parker*, 237 N.Y.S.2d 495, 38 Misc.2d 36.—*Neglig* 231.

N.Y.Sup. 1960. A defendant's lack of reasonable care in the use of its property, with resultant and foreseeable damage to plaintiffs' lands as the result of earth overrunning plaintiffs' lands, constituted "negligence."—*Burk v. High Point Homes, Inc.*, 197 N.Y.S.2d 969, 22 Misc.2d 492, appeal dismissed 205 N.Y.S.2d 862, 11 A.D.2d 701.—*Neglig* 1032.

N.Y.Sup. 1951. "Negligence" is the breach of a legal noncontractual duty to use care, with no precise intention of producing a particular injury thereby.—*Bernstein v. L. & H. Meat Co.*, 115 N.Y.S.2d 175, affirmed 115 N.Y.S.2d 823, 280 A.D. 914.—*Neglig* 250.

N.Y.Sup. 1945. The test of "negligence" is the conduct of an ordinarily prudent person under the circumstances.—*Margulies v. Denner*, 56 N.Y.S.2d 856, 185 Misc. 139, modified 65 N.Y.S.2d 441, 271 A.D. 827, affirmed 74 N.E.2d 481, 297 N.Y. 562.—*Neglig* 232.

N.Y.Sup. 1944. "Negligence" is asserted as defense to action against bank for proceeds of forged check paid thereby, where depositor has neglected duty to act, thereby allowing condition to exist, which could have been prevented in exercise of reasonable care, as by failing to examine return vouchers and statements, in which case loss to depositor can be defeated only to extent that his negligence contributed thereto.—*Maryland Cas. Co. v. Central Trust Co.*, 51 N.Y.S.2d 65, reversed 67 N.Y.S.2d 339, 271 A.D. 651, reversed 79 N.E.2d 253, 297 N.Y. 294.—*Banks* 148(3).

N.Y.Sup. 1941. Violation of Vehicle and Traffic Law is not a "crime," but constitutes "negligence." *Vehicle and Traffic Law*, § 2, subd. 29; § 58; § 81, subd. 24; § 91.—*McDonald v. Central School Dist. No. 3 of Towns of Romulus, Varick and Fayette, Seneca County*, 39 N.Y.S.2d 103, 179 Misc. 333, affirmed 36 N.Y.S.2d 438, 264 A.D. 943, affirmed 47 N.E.2d 50, 289 N.Y. 800.—*Autos* 147, 316.

N.Y.Sup. 1941. X-ray treatment, administered by X-ray technician at hospital, constituted the "practice of medicine" as defined by the Education

Law, and two-year limitation statute applicable to an action for "malpractice" was applicable, rather than three-year limitation statute dealing with "negligence", in action by patient against technician for injuries caused by the allegedly negligent administration of the X-ray treatment. *Education Law*, § 1250, subd. 7; *Civil Practice Act*, § 50, subd. 1.—*Leitch v. Mulcahy*, 31 N.Y.S.2d 874, 177 Misc. 1077.—*Health* 811.

N.Y.Sup. 1941. Mere inaction of investment corporation's director induced by reliance on assurance for ten days, by which time all the harm had been done, that nothing would be done until return of new president who was said to be ill and going away for a trip did not under evidence constitute "negligence" making director liable to account to corporation's bankruptcy trustees seeking to hold accountable for waste and improper application of corporation's assets those who sold and bought common stock and aided transaction.—*Gerdes v. Reynolds*, 28 N.Y.S.2d 622.—*Corp* 310(1).

N.Y.Sup. 1941. The failure of trustee under mortgage to obtain the funds salvaged from released property was not a violation of any expressed covenant in mortgage barred in twenty years, but was a breach by "negligence" of implied duty created by law and imposed on trustee, and hence action therefor would be barred by ten-year and not six-year statute of limitations were it not for fact that action for money damages was the only remedy provided by mortgage and such remedy was sufficient.—*Savings Bank of New London v. New York Trust Co.*, 27 N.Y.S.2d 963.—*Lim* of *Act* 39(11).

N.Y.Sup. 1940. Street lighting is a "governmental function," so that city's failure to light streets cannot be regarded as "negligence" rendering city liable for resulting injuries.—*Schlicher v. City of New York*, 24 N.Y.S.2d 177, 175 Misc. 696, affirmed 35 N.Y.S.2d 716, 264 A.D. 763.—*Mun Corp* 733(2).

N.Y.Sup. 1938. "Negligence" is gauged by the ability to anticipate, and the risk reasonably to be perceived defines the duty to be obeyed.—*Schubart v. Hotel Astor*, 5 N.Y.S.2d 203, 168 Misc. 431, affirmed 8 N.Y.S.2d 567, 255 A.D. 1012, affirmed 22 N.E.2d 167, 281 N.Y. 597.—*Neglig* 387.

N.Y.Sup. 1936. The term "negligence" refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary, or great. If a man is bound to use slight diligence and fails to do so, he is legally delinquent and is guilty of actionable negligence, and likewise where he is bound to use ordinary or great care, and fails to do so.—*Hazzard v. Chase Nat. Bank of City of New York*, 287 N.Y.S. 541, 159 Misc. 57, affirmed 14 N.Y.S.2d 147, 257 A.D. 950, appeal granted 14 N.Y.S.2d 1021, 258 A.D. 709, affirmed 26 N.E.2d 801, 282 N.Y. 652, reargument denied 28 N.E.2d 406, 283 N.Y. 682, certiorari denied 61 S.Ct. 319, 311 U.S. 708, 85 L.Ed. 460.

N.Y.Sup. 1935. Refusal to act is not "negligence" where defendant owes plaintiff no duty.—*Zelenko v. Gimbel Bros.*, 287 N.Y.S. 134, 158 Misc.

904, affirmed 287 N.Y.S. 136, 247 A.D. 867.—*Neglig* 210.

N.Y.Sup. 1935. "Fraud" presupposes a willful purpose resorted to with intent to deprive another of his legal rights and is positive, in that the purposes concur with the act, designedly and knowingly committed, but "negligence" is an omission of duty, and does not include a purpose to do a wrongful act. *General Business Law*, § 353.—*People v. Photocolor Corp.*, 281 N.Y.S. 130, 156 Misc. 47.—*Fraud* 4; *Neglig* 201.

N.Y.Sup. 1934. Either "misfeasance," which is performance of act in improper manner, or "non-feasance," which is failure to perform act, or both together, may constitute negligence. "Negligence" has been defined as failure to do what reasonable and prudent person would ordinarily have done under circumstances or doing what such person would not have done under circumstances.—*Daurizio v. Merchants' Despatch Transp. Co.*, 274 N.Y.S. 174, 152 Misc. 716.

N.Y.Sup. 1932. "Negligence" and "fraud" are not synonymous terms, nor in legal effect are they equivalent terms. "Fraud" presupposes a willful purpose resorted to with intent to deprive another of his legal rights. It is positive, in that the purpose concurs with the act, designedly and knowingly committed. "Negligence," whatever be its grade, does not include a purpose to do a wrongful act. It may be some evidence of, but is not, fraud.—*Balboa Realty Co. v. Brenglass Realty Corp.*, 264 N.Y.S. 287, 147 Misc. 602.

N.Y.Sup. 1915. "Negligence" is the failure to act in a given society according to common standards.—*Herkey v. Agar Mfg. Co.*, 153 N.Y.S. 369, 90 Misc. 457.

N.Y.Sup.App.Term 1940. Where plaintiff entered store for purpose of using telephone and saw porter washing floor near store entrance with soap and water, and on leaving telephone booth slipped and was injured on part of floor outside booth which porter was washing while plaintiff used telephone, mere presence of soapy water on floor in process of cleaning did not constitute "negligence" so as to impose liability on store owner for plaintiff's injuries.—*Jablin v. United Cigar-Whelan Stores Corp.*, 19 N.Y.S.2d 976.—*Neglig* 1104(8).

N.Y.Sup.App.Term 1940. Excessive crowding or jerking of train was not in itself "negligence" as respects injury to passenger.—*Marko v. New York Rapid Transit Corp.*, 18 N.Y.S.2d 449.—*Carr* 295, 298.

N.Y.Sup.App.Term 1913. The failure of a chauffeur to stop his automobile on signal from a driver of horses, in violation of *Laws* 1910, c. 374, § 286, is "negligence."—*Union Transfer & Storage Co. v. Westcott Express Co.*, 140 N.Y.S. 98, 79 Misc. 408.

N.Y.Sup.App.Term 1910. In absence of proof of negligence by defendant in permitting the stairway in its store to be in a faulty or dangerous condition, "negligence" cannot be imputed as a matter of law from the happening of an accident on

the stairway.—*Belsky v. Fourteenth St. Store*, 121 N.Y.S. 321.

N.Y.Sur. 1933. "Negligence" is without legal significance unless it is the proximate cause of damage to a blameless person.—*In re McCafferty's Will*, 264 N.Y.S. 38, 147 Misc. 179.—Neglig 372.

N.Y.Co.Ct. 1965. "Negligence" is absence of care, according to circumstances.—*Cramer v. Niagara Mohawk Power Corp.*, 257 N.Y.S.2d 380, 45 Misc.2d 670.—Neglig 230.

N.Y.Co.Ct. 1939. The "negligence" essential to establish criminal liability for operation of automobile resulting in death must be something more than slight negligence, and must be of such character as to show a disregard of the consequences which may ensue from the act charged and an indifference to the rights of others. Penal Law, § 1053-a.—*People v. Ambrico*, 12 N.Y.S.2d 510.—Autos 344.

N.Y.Co.Ct. 1934. "Negligence" of town superintendent of highways, rendering town liable for injuries to travelers because of defects in highways is omission, constituting proximate cause of injuries, to use ordinary care in performance of his legal duties. Highway Law, §§ 40, 47, 74, 75.—*Gaynor v. Town of Hempstead*, 275 N.Y.S. 562, 153 Misc. 321.—High 187(1).

N.Y.Co.Ct. 1908. Many definitions have been given of "negligence," among others, that it is a violation of the duty to exercise care. "Negligence" implies a voluntary act or omission.—*Weeks v. Auburn & S. Electric Ry. Co.*, 113 N.Y.S. 636, 60 Misc. 400.

N.Y.Mun.Ct. 1935. Evidence held insufficient to justify recovery for corrosion of radio transmitting station's underground water pipes, allegedly caused by electric current escaping from tracks of street railway, on ground that railway company was negligent. "Nuisance" consists in wrongful maintenance of thing itself, while "negligence" usually consists in the manner of doing the thing. Hence, in nuisance, it is the wrongful or unlawful maintenance of the thing resulting in damage to others that gives the right of action, irrespective of whether its operation is careful or careless; while in negligence it is the careless operation of the thing whereby others are damaged, irrespective of whether it is lawful or unlawful.—*Gildon Holding Corporation v. New York & Queens Transit Corporation*, 284 N.Y.S. 539, 157 Misc. 644.

N.Y.Mun.Ct. 1932. Evidence held not to show hotel guest was guilty of "negligence" in loss of property from room.—*Hart v. Mills Hotel Trust*, 258 N.Y.S. 417, 144 Misc. 121.—Inn 11(12).

N.Y.Mun.Ct. 1932. "Negligence" is elastic term not confined within precise precincts or to restricted relationships.—*Esposito v. St. George Swimming Club*, 255 N.Y.S. 794, 143 Misc. 15.—Neglig 200.

N.Y.Ct.Cl. 1962. "Negligence" is omission of "proper care" which is due precaution against danger reasonably to be perceived.—*McCormick v.*

State, 229 N.Y.S.2d 441, 34 Misc.2d 806.—Neglig 231.

N.Y.Ct.Cl. 1960. Failure to use reasonable care is "negligence".—*Arno v. State*, 195 N.Y.S.2d 924, 20 Misc.2d 995.—Neglig 233.

N.Y.Ct.Cl. 1947. "Misfeasance" or "negligence" of state officers or employees, rendering state liable for damages sustained on a highway, may be a failure to warn of highway obstructions or a failure to repair dangerous condition of highway after notice to state. Court of Claims Act, § 8; Highway Law, § 58.—*Sutherland v. State*, 68 N.Y.S.2d 553, 189 Misc. 953.—Autos 266, 279.

N.Y.Ct.Cl. 1942. Where the state failed to perform its statutory duty to post notices and to erect lights marking a highway as officially closed and claimant motorist entered the unmarked highway and was injured by colliding with a road roller, the failure to post notices constituted "negligence" for which the state was liable. Highway Law, § 104; Courts of Claims Act § 12-a.—*Wagner v. State*, 32 N.Y.S.2d 818, 177 Misc. 1078.—Autos 279.

N.Y.Ct.Cl. 1942. The operation of 15-ton road roller on traveled portion of public highway after dark, without displaying lights or other warnings, signals or devices calling attention to its presence to other users of the highway, was "negligence" rendering the state liable for injuries caused in the collision to motorist. Highway Law, § 318.—*Wagner v. State*, 32 N.Y.S.2d 818, 177 Misc. 1078.—Autos 149, 151.

N.Y.Ct.Cl. 1942. "Negligence" does not exist unless there is a reasonable likelihood of dangerous consequence of the act complained of, and the possibility of an accident must be clear to the ordinarily prudent eye.—*Herrick v. State*, 32 N.Y.S.2d 607, 177 Misc. 1009.—Neglig 213.

N.Y.Ct.Cl. 1940. Where stones, dirt and boulders had fallen from steep embankment onto road for some time and had been cleaned away by state employees, but infant passenger in automobile was injured when automobile struck stone in road which had not been cleaned away, and immediately after accident a path was seen in snow leading down embankment to the stone, state's failure to protect passenger from the stone was "negligence".—*Hazard v. State*, 23 N.Y.S.2d 29.—Autos 264.

N.Y.Ct.Cl. 1939. Evidence established liability of state for damages sustained by reason of death of inmate of state hospital who had suicidal mania and who hanged himself between hours of 5 and 6:15 in the morning during temporary absence of two attendants from dormitory which inmate occupied with 47 other inmates who were more disturbed than other patients, on ground that leaving inmate without direct supervision for more than one hour constituted "negligence".—*Dimitroff v. State*, 13 N.Y.S.2d 458, 171 Misc. 635.—States 112.2(4).

N.Y.City Ct. 1955. The word "negligence" as used in the Jones Act in making the employer liable for negligence, must be given a liberal interpretation, and includes any knowing or careless breach

of any obligation, which the shipowner owes to the seamen, including the obligation of seeing to the safety of the crew. Jones Act, 46 U.S.C.A. § 688; Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51.—*Castro v. California Tanker Co.*, 151 N.Y.S.2d 998.—*Seamen* 29(1).

N.Y.City Ct. 1944. "Negligence" is the failure to exercise that care and caution which a reasonable and prudent person would exercise under like conditions.—*Yashar v. Yakovac*, 48 N.Y.S.2d 128.—*Neglig* 233.

N.Y.City Ct. 1941. "Negligence" is the failure to exercise that care and caution which a reasonable and prudent person ordinarily would exercise under like conditions or circumstances.—*Cordas v. Peerless Transp. Co.*, 27 N.Y.S.2d 198.—*Neglig* 233.

N.Y.City Ct. 1941. Where bandit in escaping from scene of crime forced driver at point of gun to drive taxicab and driver at first opportunity put taxicab out of gear, set emergency brake and jumped from cab which moved for short distance and injured people on sidewalk, driver's act in abandoning taxicab under the circumstances was not "negligence" contributing to injury of pedestrian injured on sidewalk, so as to authorize pedestrian to recover from cab owner for injuries.—*Cordas v. Peerless Transp. Co.*, 27 N.Y.S.2d 198.—*Autos* 159.

N.Y.City Ct. 1940. "Negligence" is to be gauged by the ability of one to anticipate danger, and test of actionable negligence is not what could have been done to prevent a particular accident but what a reasonably prudent and careful person would have done under the circumstances in the discharge of his duty to the injured party.—*Rothstein v. Monette*, 17 N.Y.S.2d 369.—*Neglig* 233.

N.Y.City Ct. 1940. Failure to guard against a remote possibility of accident or one which could not in the exercise of ordinary care be foreseen does not constitute "negligence."—*Rothstein v. Monette*, 17 N.Y.S.2d 369.—*Neglig* 213.

N.Y.City Ct. 1939. Failure to use ordinary precaution is "negligence."—*Vangellow v. East Side Sav. Bank*, 11 N.Y.S.2d 982.—*Neglig* 232.

N.Y.City Ct. 1935. "Negligence," considered merely as a tort, is a wrong independent of contract, but "negligence" may also be a breach of contract if the contract itself calls for care.—*Matusow v. Camp Orinsekwa*, 280 N.Y.S. 626, 155 Misc. 452.—*Neglig* 219.

N.Y.City Ct. 1931. The City Court should be held to have jurisdiction on ground that the action is a marine cause and is established by federal statutes, in view of extension to seamen by 46 U.S.C.A. § 688, of rights and remedies given by Congress to railroad employees, and in view of definition of word "negligence" in Federal Employers' Liability Act, 45 U.S.C.A. §§ 51-59, to include "assault."—*McConnell v. Williams S.S. Co.*, 254 N.Y.S. 597, 142 Misc. 269, reversed 256 N.Y.S. 858, 143 Misc. 426.

N.Y.Super. 1893. The term "negligence" has been variously defined, but, after all, means nothing more or less than the absence of care according to the nature of the duty and the exigencies of the case.—*Elze v. Baumann*, 49 N.Y.St.Rep. 629, 21 N.Y.S. 782, 2 Misc. 72.

N.C. 1996. "Negligence" is the failure to exercise proper care in performance of legal duty owed by defendant to plaintiff under the circumstances, and in absence of legal duty owed to plaintiff, defendant cannot be liable for negligence.—*Cassell v. Collins*, 472 S.E.2d 770, 344 N.C. 160.—*Neglig* 210.

N.C. 1996. "Negligence" is failure to exercise duty of care for safety of another.—*Newton v. New Hanover County Bd. of Educ.*, 467 S.E.2d 58, 342 N.C. 554.—*Neglig* 230.

N.C. 1987. Defendant is liable for "negligence" only if he owed duty of care to plaintiff, which duty was violated, proximately causing injury to plaintiff.—*Blanton v. Moses H. Cone Memorial Hosp., Inc.*, 354 S.E.2d 455, 319 N.C. 372.—*Neglig* 202.

N.C. 1979. Plaintiff, who seeks to recover on theory of "negligence", has burden of showing negligence and proximate cause.—*Rappaport v. Days Inn of America, Inc.*, 250 S.E.2d 245, 296 N.C. 382.—*Neglig* 1550, 1568.

N.C. 1968. "Negligence" is failure to exercise proper care in performance of some legal duty which defendant owes injured party under circumstances in which they are placed.—*Clarke v. Holman*, 163 S.E.2d 783, 274 N.C. 425.—*Neglig* 230.

N.C. 1968. "Negligence" is failure to exercise proper care in performance of legal duty which defendant owed plaintiff under circumstances surrounding them.—*Dunning v. Forsyth Warehouse Co.*, 158 S.E.2d 893, 272 N.C. 723.—*Neglig* 250.

N.C. 1966. "Negligence" is failure to exercise proper care in performance of legal duty which defendant owed plaintiff under the circumstances.—*Moore v. Moore*, 150 S.E.2d 75, 268 N.C. 110.—*Neglig* 250.

N.C. 1966. Law imposes upon every person who enters upon an active course of conduct the positive duty to exercise ordinary care to protect others from harm and calls violation of that duty "negligence."—*Firemen's Mut. Ins. Co. v. High Point Sprinkler Co.*, 146 S.E.2d 53, 266 N.C. 134.—*Neglig* 210.

N.C. 1965. "Negligence" is failure to exercise that degree of care for others' safety which ordinarily prudent man under like circumstances would exercise.—*Pinyan v. Settle*, 139 S.E.2d 863, 263 N.C. 578.—*Neglig* 232.

N.C. 1964. Law imposes upon everyone who enters upon an active course of conduct the positive duty to use ordinary care to protect others from harm, and a violation of that duty is "negligence", regardless of whether the person acts in his own behalf or under contract with another.—*Toone v. Adams*, 137 S.E.2d 132, 262 N.C. 403, 10 A.L.R.3d 435.—*Neglig* 210.

N.C. 1961. Under rule stating that homicide is excusable if killing was accidental and was not result of negligence, "negligence" means not merely actionable negligence but imports wantonness, recklessness or other conduct amounting to culpable negligence.—*State v. Faust*, 118 S.E.2d 769, 254 N.C. 101, 96 A.L.R.2d 1422, certiorari denied 82 S.Ct. 85, 368 U.S. 851, 7 L.Ed.2d 49.—*Homic* 762.

N.C. 1956. "Negligence" is an outgrowth of the action of trespass on the case and does not include intentional acts of violence.—*Jenkins v. North Carolina Dept. of Motor Vehicles*, 94 S.E.2d 577, 244 N.C. 560.—*Neglig* 201.

N.C. 1956. "Negligence" consisting of a failure to use care and, whether slight or extreme, connotes inadvertence; whereas "wantonness" connotes intentional wrongdoing; and conduct is wanton when in conscious and intentional disregard of and indifference to rights and safety of others.—*Hinson v. Dawson*, 92 S.E.2d 393, 244 N.C. 23, 62 A.L.R.2d 806.—*Neglig* 201, 275.

N.C. 1956. The law imposes upon every person who enters upon an active course of conduct the positive duty to exercise ordinary care to protect others from harm, and calls violation of that duty "negligence".—*Williamson v. Clay*, 90 S.E.2d 727, 243 N.C. 337.—*Neglig* 210.

N.C. 1954. "Negligence" is breach of some duty imposed by law.—*Aldridge v. Hasty*, 82 S.E.2d 331, 240 N.C. 353.—*Neglig* 250.

N.C. 1954. Violation of motor vehicle traffic regulation is breach of duty imposed by law for protection of individuals and their property and hence constitutes "negligence".—*Aldridge v. Hasty*, 82 S.E.2d 331, 240 N.C. 353.—*Autos* 147.

N.C. 1954. "Negligence" is a failure to exercise ordinary care in the performance of some legal duty which the defendant owed the plaintiff under the circumstances in which they are placed at the time.—*Honeycutt v. Bryan*, 81 S.E.2d 653, 240 N.C. 238.—*Neglig* 232.

N.C. 1952. Actionable "negligence" is the failure to observe, for protection of interest of another person, that degree of care, precaution, and vigilance which circumstances justly demand, whereby some other person suffers injury.—*Harward v. General Motors Corp.*, 68 S.E.2d 855, 235 N.C. 88.—*Neglig* 230.

N.C. 1952. "Negligence" is never presumed from mere fact of an automobile accident or injury.—*Harward v. General Motors Corp.*, 68 S.E.2d 855, 235 N.C. 88.—*Autos* 242(2).

N.C. 1952. In order to charge owner of automobile for "negligence" or "default of another" where question in issue is whether driver was owner's servant and at the time was engaged in owner's business, there must be some evidence of "agency" of driver at the time and in respect to the transaction out of which injury arose, and proof of ownership alone is not sufficient to warrant or support an inference of such agency.—*Lindsey v. Leonard*, 68 S.E.2d 852, 235 N.C. 100.—*Autos* 244(26).

N.C. 1950. "Negligence" is a failure to perform some duty imposed by law, and it may be a breach of duty imposed by some statute designed and intended to protect life or property, and in that event, tort-feasor is liable for all damages naturally and proximately resulting from his wrong, without regard to whether he could have foreseen such injurious result.—*Holderfield v. Rummage Bros. Trucking Co.*, 61 S.E.2d 904, 232 N.C. 623.—*Neglig* 259, 387, 409.

N.C. 1950. Actionable "negligence" is a breach of duty of party sought to be charged to exercise ordinary care for the safety of plaintiff and others similarly situated which proximately causes the injury alleged.—*Holderfield v. Rummage Bros. Trucking Co.*, 61 S.E.2d 904, 232 N.C. 623.—*Neglig* 250.

N.C. 1948. Unintentional violation of a prohibitory statute or ordinance unaccompanied by recklessness or probable consequences of a dangerous nature when tested by the rule of reasonable provision is not such "negligence" as imports criminal responsibility.—*State v. Wooten*, 46 S.E.2d 868, 228 N.C. 628.—*Neglig* 1800.

N.C. 1948. If inadvertent violation of a prohibitory statute or ordinance be accompanied by recklessness or probable consequences of a dangerous nature when tested by the rule of reasonable provision, amounting altogether to a thoughtless disregard of consequence or a heedless indifference to the safety and rights of others, then such "negligence," if injury or death proximately ensue, would be "culpable" and the actor guilty of an assault or manslaughter and under some circumstances of murder.—*State v. Wooten*, 46 S.E.2d 868, 228 N.C. 628.—*Assault* 48; *Homic* 587, 708.

N.C. 1945. "Negligence" is doing other than, or failing to do, what reasonably prudent man would do under same or similar circumstances, or want of "due care," which means commensurate care under circumstances, tested by standard of reasonable prudence and foresight.—*Rea v. Simowitz*, 35 S.E.2d 871, 225 N.C. 575, 162 A.L.R. 999.—*Neglig* 233.

N.C. 1945. "Negligence" is the failure to exercise the care of a reasonably prudent man.—*Harper v. Harper*, 34 S.E.2d 185, 225 N.C. 260.—*Neglig* 233.

N.C. 1942. "Negligence" is doing other than, or failing to do, what a reasonably prudent man, similarly situated, would have done.—*Threatt v. Railway Exp. Agency*, 19 S.E.2d 873, 221 N.C. 211.—*Neglig* 233.

N.C. 1942. An automobile driver, failing to stop on state highway before entering through federal highway, though stop and junction signs were plainly visible, approaching intersection without slackening speed, and failing to see truck approaching intersection on federal highway, though there was nothing to obstruct his view thereof, was guilty of "negligence" as matter of law, so as to bar recovery of damages from truck driver and owner for automobile driver's guest's death, of which such negligence was sole proximate cause. Pub.Laws 1937, c.

407, §§ 103, 120(a); C.S. §§ 160, 161.—Reeves v. Staley, 18 S.E.2d 239, 220 N.C. 573.—Autos 201(1.1).

N.C. 1942. Where wife became a guest in her husband's automobile knowing that he habitually drove recklessly and at a high rate of speed without keeping a proper lookout and that he would ignore any protest or remonstrance she might make, and wife failed to abandon journey and return home on any one of numerous occasions when she had opportunity to do so after husband's continued recklessness became apparent, wife committed a primary act of "negligence" conclusively evidencing a want of "due care" for her own safety contributing to her own injury, and hence she could not recover from husband for injuries sustained in collision.—Bogen v. Bogen, 18 S.E.2d 162, 220 N.C. 648.—Autos 224(6), 226(1).

N.C. 1941. "Negligence" is doing other than, or failing to do, what a reasonably prudent man, similarly situated, would have done.—Wellons v. Sherin, 14 S.E.2d 426, 219 N.C. 476.—Neglig 233.

N.C. 1941. To establish actionable "negligence", plaintiff must show that defendant failed to exercise proper care in performing some legal duty owed to plaintiff, and that such breach of duty proximately caused the injury.—Mills v. Moore, 12 S.E.2d 661, 219 N.C. 25.—Neglig 202, 250.

N.C. 1940. A railroad had duty to exercise "ordinary care" to provide for member of bridge force engaged in repairing or reflooring grade crossing a reasonably safe place in which to work, which is that degree of care which a man of ordinary prudence would exercise under like circumstances having regard for his own safety if he were providing for himself a place to work, and breach of such duty would be "negligence."—Murray v. Atlantic Coast Line R. Co., 11 S.E.2d 326, 218 N.C. 392.—Emp Liab 35.

N.C. 1938. "Negligence" and "contributory negligence" are essentially the same, and the criterion for establishing both is the same.—Sebastian v. Horton Motor Lines, 197 S.E. 539, 213 N.C. 770.—Neglig 200, 502(2).

N.C. 1938. A grantor's failure to read deed which he signed and to understand what he was conveying is "negligence" and not "mistake," as respects grantor's right to reform deed.—Griggs v. Griggs, 197 S.E. 165, 213 N.C. 624.—Ref of Inst 25.

N.C. 1937. "Negligence" is breach of some duty imposed by law or doing other than or failing to do what a reasonably prudent man similarly situated would have done, or in short, a want of "due care."—Diamond v. McDonald Service Stores, 191 S.E. 358, 211 N.C. 632.—Neglig 233.

N.C. 1937. "Negligence" is the breach of some duty imposed by law or the doing other than, or failing to do, what a reasonably prudent man similarly situated would have done.—Cole v. Atlantic Coast Line R. Co., 191 S.E. 353, 211 N.C. 591.—Neglig 233.

N.C. 1936. "Negligence" is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such a person under the existing circumstances would not have done. The essence of the fault may lie in omission or commission. The duty is dictated and measured by the exigencies of the situation. Negligence has always relation to the circumstances in which one is placed, and what an ordinarily prudent man would do or omit in such circumstances.—Wachovia Bank & Trust Co. v. Southern Ry. Co., 183 S.E. 620, 209 N.C. 304.

N.C. 1932. "Negligence" is breach of legal duty to use due care.—Rountree v. Fountain, 166 S.E. 329, 203 N.C. 381.—Neglig 250.

N.C. 1932. "Negligence" is absence of conduct of prudent, careful, or diligent man.—Henderson Chevrolet Co. v. Ingle, 162 S.E. 219, 202 N.C. 158, 88 A.L.R. 477.—Neglig 231.

N.C. 1931. "Negligence" is failure to observe for protection of another person that degree of care, precaution, and vigilance which circumstances justly demand whereby some other person suffers injury.—Broughton v. Standard Oil Co. of N. J., 159 S.E. 321, 201 N.C. 282.—Neglig 230.

N.C. 1926. "Negligence" is relative term, and depends upon all attendant circumstances of particular case.—Malcolm v. Mooresville Cotton Mills, 133 S.E. 7, 191 N.C. 727.—Neglig 200.

N.C. 1926. "Negligence" defined.—Boswell v. Whitehead Hosiery Mills, 132 S.E. 598, 191 N.C. 549.—Neglig 200.

N.C. 1925. "Negligence" is omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent or reasonable man would not do.—Campbell v. Model Steam Laundry, 130 S.E. 638, 190 N.C. 649.

N.C. 1924. Where evidence showed that defendants had plaintiff declared insane without subjecting her to inquisition of lunacy provided by C.S. §§ 6192, 6193, 6194, 6195, 6196, refusal of court to charge, in response to jury's request, that negligence of defendants might be considered with other evidence on issue whether they acted fraudulently or in good faith, held reversible error; "negligence" being failure to exercise ordinary care; being that degree of care which a prudent man would use under like circumstances, and charged with like duty.—Getsinger v. Corbell, 125 S.E. 180, 188 N.C. 553.—Consp 21.

N.C. 1917. "Negligence" is the breach of a legal duty.—Taylor v. Neuse Lumber Co., 91 S.E. 719, 173 N.C. 112.

N.C. 1915. "Negligence" may be defined generally as a breach of a duty to exercise commensurate care.—Hanes v. Shapiro & Smith, 84 S.E. 33, 168 N.C. 24.

N.C. 1914. Where plaintiff, while assisting employees of defendant on a freight train to unload a

barrel of merchandise, was injured by a brakeman pushing the barrel out of the car so that it fell on plaintiff, such facts were insufficient to establish a willful injury by defendant's servant; the term "willful" being a stronger term than "negligence," and implying more than an intention to do a thing, meaning the doing of an act purposely, deliberately, and with indifference as to whether it was wrong or not as to the rights of others.—*Brittain v. Southern Ry. Co.*, 83 S.E. 702, 167 N.C. 642.

N.C. 1914. The failure to exercise the diligence and care of persons of ordinary prudence, or the failure to perform a duty due from one to another is "negligence."—*Saunders v. Southern Ry. Co.*, 83 S.E. 573, 167 N.C. 375.—Neglig 232.

N.C. 1914. A city does not insure or warrant the safe condition of its streets, but must keep and maintain them in a reasonably safe condition, and exercise ordinary care and due diligence to see that they are so kept and maintained, and its liability for injuries is based upon "negligence," or the absence of that care which a man of ordinary prudence would exercise under like circumstances.—*Alexander v. City of Statesville*, 81 S.E. 763, 165 N.C. 527.

N.C. 1912. The elements involved in a cause of action for "negligence" are the existence of a duty to protect plaintiff from injury, failure to perform such duty, and resulting injury.—*J.M. Pace Mule Co. v. Seaboard Air Line Ry. Co.*, 76 S.E. 513, 160 N.C. 215, reversed 34 S.Ct. 775, 234 U.S. 751, 58 L.Ed. 1571.

N.C. 1911. "Negligence" is the failure to perform a duty imposed by law, or to exercise that care which a man of ordinary prudence would have exercised under existing circumstances, and where conditions change, the degree of care required changes with them.—*Pritchett v. Southern Ry. Co.*, 72 S.E. 828, 157 N.C. 88.—Neglig 232.

N.C. 1909. "Negligence" consists in doing, or omitting to do, an act by which a legal duty or obligation is violated.—*Monroe v. Atlantic Coast Line R. Co.*, 66 S.E. 315, 151 N.C. 374, 27 L.R.A.N.S. 193.

N.C. 1909. "Negligence" is not "actionable" unless some legal duty has been neglected, tending to the result in continuous and natural sequence, so that one of ordinary prudence would foresee that the result would naturally follow.—*Blevins v. Erwin Cotton Mills Co.*, 64 S.E. 428, 150 N.C. 493.

N.C. 1906. "Negligence" is the failure to exercise the proper degree of care in the performance of some legal duty which one owes another and causing unintended damages.—*Foot v. Seaboard Air Line Ry.*, 54 S.E. 843, 142 N.C. 52.

N.C. 1906. "Negligence" is the failure to observe for the protection of another that degree of care which the circumstances justly demand, whereby such other person suffers injury.—*Fisher v. City of Newbern*, 53 S.E. 342, 140 N.C. 506, 5 L.R.A.N.S. 543, 111 Am.St.Rep. 875.

N.C. 1905. "Negligence" was properly defined as a want of ordinary care and failure to exercise

that care which a man of ordinary prudence would have exercised under the circumstances, or a failure to perform some duty imposed by law.—*Jones v. American Warehouse Co.*, 51 S.E. 106, 138 N.C. 546.

N.C. 1887. "Negligence" and "gross negligence" are relative terms. An act under certain circumstances might be simply negligent. The same act under other circumstances might be grossly negligent. Undoubtedly a carrier would be charged with greater care in handling valuable glass than in handling ironware, or in transporting a package of gold than one of brass. So what might be slight negligence in a telegraph operator in transmitting a message of apparent slight importance might be gross negligence in transmitting one of apparent great importance.—*Pegram v. Western Union Telegraph Co.*, 2 S.E. 256, 97 N.C. 57.

N.C.App. 2002. "Negligence" is the breach of a legal duty owed by defendant that negligence causes injury to plaintiff.—*Guthrie v. Conroy*, 567 S.E.2d 403, 152 N.C.App. 15.—Neglig 202.

N.C.App. 2001. "Negligence" is the failure to exercise proper care in the performance of a legal duty which the defendant owed the plaintiff under the circumstances surrounding them.—*Oberlin Capital, L.P. v. Slavin*, 554 S.E.2d 840, 147 N.C.App. 52.—Neglig 202.

N.C.App. 2001. "Negligence" is the breach of a legal duty proximately causing injury.—*Britt v. Hayes*, 541 S.E.2d 761, 142 N.C.App. 190, review allowed 548 S.E.2d 523, 353 N.C. 450, review allowed 548 S.E.2d 523, review improvidently allowed 553 S.E.2d 681, 354 N.C. 352.—Neglig 202.

N.C.App. 1996. "Negligence" is failure to exercise proper care in performance of some legal duty owed by defendant to plaintiff under circumstances.—*Carlson v. Branch Banking and Trust Co.*, 473 S.E.2d 631, 123 N.C.App. 306, review denied 483 S.E.2d 162, 345 N.C. 340.—Neglig 230.

N.C.App. 1996. Actionable "negligence" is the failure to exercise that degree of care which reasonable and prudent man would exercise under similar conditions and which proximately causes injury or damage to another.—*Tise v. Yates Const. Co., Inc.*, 471 S.E.2d 102, 122 N.C.App. 582, review allowed 473 S.E.2d 628, 343 N.C. 758, affirmed as modified and remanded 480 S.E.2d 677, 345 N.C. 456.—Neglig 233, 372.

N.C.App. 1992. "Negligence" is gross, willful or wanton, for punitive damage purposes, when wrongdoer acts with conscious and intentional disregard of and indifference to rights and safety of others.—*Berrier v. Thrift*, 420 S.E.2d 206, 107 N.C.App. 356, review denied 424 S.E.2d 918, 333 N.C. 254.—Damag 91(3).

N.C.App. 1987. Law imposes on every person in an active course of conduct the positive duty to use ordinary care to protect others from harm and it is "negligence" to violate that duty.—*Stewart v. Allison*, 356 S.E.2d 109, 86 N.C.App. 68.—Neglig 232.

N.C.App. 1987. Any "negligence" on part of city, in failing to repair delapidated fence that was located alongside city street, was mere "concurrent" and not "insulating negligence", for purpose of deciding whether party that owned land on which fence was located was liable to motorist who had been impaled on fence pole.—*Petty v. City of Charlotte*, 355 S.E.2d 210, 85 N.C.App. 391, temporary stay allowed 356 S.E.2d 792, 319 N.C. 674, stay dissolved 358 S.E.2d 54, review denied 358 S.E.2d 54, 320 N.C. 170, appeal after remand 369 S.E.2d 612, 90 N.C.App. 559.—*Autos* 269.

N.C.App. 1984. "Negligence" is failure to do what reasonably careful and prudent person would have done, or doing of something which reasonably careful and prudent person would not have done considering all circumstances.—*Oakes v. James*, 315 S.E.2d 802, 68 N.C.App. 765.—*Neglig* 233.

N.C.App. 1979. The law imposes upon every person who enters upon an active course of conduct the positive duty to exercise ordinary care to protect others from harm, and violation of that duty is "negligence."—*Davidson and Jones, Inc. v. New Hanover County*, 255 S.E.2d 580, 41 N.C.App. 661, review denied 259 S.E.2d 911, 298 N.C. 295.—*Neglig* 210.

N.C.App. 1978. Though there may be no question of fact and though what is "negligence" is a question of law, when facts are such that reasonable men could differ on the issue of negligence, "summary judgment" is generally considered improper. Rules of Civil Procedure, rule 56, G.S. § 1A-1.—*Gladstein v. South Square Associates*, 249 S.E.2d 827, 39 N.C.App. 171, review denied 254 S.E.2d 178, 296 N.C. 736.—*Judgm* 181(33).

N.C.App. 1977. "Negligence" is the tortious breach of the ordinary duty of due care and this duty may arise as a consequence of contractual relationships.—*North Carolina State Ports Authority v. Lloyd A. Fry Roofing Co.*, 232 S.E.2d 846, 32 N.C.App. 400, review allowed 235 S.E.2d 783, 292 N.C. 730, affirmed 240 S.E.2d 345, 294 N.C. 73.—*Neglig* 219, 231.

N.C.App. 1975. "Negligence" is the failure to use due care under the circumstances; one of the circumstances might be the known susceptibility to injury of a person to whom the duty of due care is owed.—*Hinson v. Sparrow*, 214 S.E.2d 198, 25 N.C.App. 571.—*Neglig* 231.

N.C.App. 1970. "Negligence" is failure to exercise that degree of care that an ordinarily prudent person would exercise under same or similar circumstances, and when charged with like duty.—*Tharpe v. Brewer*, 172 S.E.2d 919, 7 N.C.App. 432, 63 A.L.R.3d 816, certiorari denied.—*Neglig* 232.

N.C.App. 1968. "Negligence" is failure to exercise that degree of care for safety of other persons or other property which reasonably prudent man, under like circumstances, would exercise, and may consist of acts of commission or omission.—*Forrest v. S. H. Kress & Co.*, 161 S.E.2d 225, 1 N.C.App. 305.—*Neglig* 233.

N.C.App. 1968. "Negligence" is failure to exercise that degree of care for safety of other persons or other property which reasonably prudent man, under like circumstances, would exercise and may consist either of acts of commission or omission.—*Southern Ry. Co. v. Dockery*, 160 S.E.2d 537, 1 N.C.App. 195.—*Neglig* 233.

N.D. 1999. "Negligence" consists of a duty on the part of an allegedly negligent person to protect the plaintiff from injury, a failure to discharge the duty, and a resulting injury proximately caused by the breach of the duty.—*Hurt v. Freeland*, 589 N.W.2d 551, 1999 ND 12.—*Neglig* 202.

N.D. 1972. Term "negligence" is relative and its application depends on situation of the party and the degree of care that the circumstances reasonably impose.—*Moum v. Maercklein*, 201 N.W.2d 399.—*Neglig* 230.

N.D. 1970. "Negligence" is failure of person to observe, for protection of another person's interests, that degree of care, precaution and vigilance justly demanded by circumstances, by reason of which failure such other person suffers injury.—*Zerr v. Sommer*, 179 N.W.2d 330, 44 A.L.R.3d 348.—*Neglig* 230.

N.D. 1955. "Negligence" is failure of person to observe, for protection of another person's interests, degree of care, precaution and vigilance justly demanded by circumstances, whereby such other person suffers injury.—*Belt v. City of Grand Forks*, 68 N.W.2d 114.—*Neglig* 230.

N.D. 1955. "Negligence" being failure to perform a duty, there can be no negligence, in absence of duty.—*Belt v. City of Grand Forks*, 68 N.W.2d 114.—*Neglig* 210.

N.D. 1952. The term "accident," as ordinarily used, is more comprehensive than term "negligence," and, as general rule, whether personal injury intentionally inflicted may be considered to be result of "accident," within meaning of liability policy, is determined from standpoint of victim and not aggressor, and where injury ensues from unprovoked and unauthorized assault it is result of an "accident."—*Haser v. Maryland Cas. Co.*, 53 N.W.2d 508, 78 N.D. 893, 33 A.L.R.2d 1018.—*Insurance* 2275.

N.D. 1951. Actionable "negligence" consists of a duty, the violation thereof, and a consequent injury, and absence of any one of these essentials is fatal to the claim.—*McDermott v. Sway*, 50 N.W.2d 235, 78 N.D. 521.—*Neglig* 202.

N.D. 1937. In employee's action against carrier under Federal Employers' Liability Act, assumption of risk is a valid defense and bars recovery if proved unless carrier has violated some statute enacted for safety of employee and such violation has contributed to injury. Federal Employers' Liability Act, 45 U.S.C.A. §§ 51-59. "Assumption of risk" implies knowledge of danger and willingness to encounter it, whereas "negligence" comes from inattention or oversight.—*DeMoss v. Great Northern Ry. Co.*, 272 N.W. 506, 67 N.D. 412.

N.D. 1933. The word "heedlessness" signifies a failure to take heed and is a synonym of carelessness. Standing by itself, it connotes a lack of care substantially identical with that indicated by the word "negligence."—*Schwager v. Anderson*, 249 N.W. 305, 63 N.D. 579.

N.D. 1928. With regard to possible "negligence" when switching cars across a village thoroughfare, it is the duty of the railroad to keep a lookout, brakeman, or flagman at the crossing to give warning of the approach of cars to allow travelers on the highway a reasonable opportunity for avoiding danger.—*Chezik v. Minneapolis, St. P. & S.S.M. Ry. Co.*, 218 N.W. 217, 56 N.D. 553.

N.D. 1927. "Negligence" is failure to exercise degree of care demanded by circumstances.—*Gallagher v. Great Northern Ry. Co.*, 212 N.W. 839, 55 N.D. 211.—*Neglig* 230.

N.D. 1911. An instruction that the terms "negligence," "negligent," and "negligently" import a want of such attention to the natural or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns, being in the exact language of Rev. Codes 1905, § 9522, is sufficient, especially where no more specific instruction was asked.—*Zilke v. Johnson*, 132 N.W. 640, 22 N.D. 75, *Am. Ann. Cas.* 1913E, 1005.—*Neglig* 1720.

Ohio 1948. The term "negligence" is synonymous with heedlessness, thoughtlessness, inattention, inadvertence, and oversight, and conveys the idea of inadvertence as distinguished from premeditated or formed intention, or a conscious purpose to do a wrong act or to omit the performance of a duty.—*Tighe v. Diamond*, 80 N.E.2d 122, 149 Ohio St. 520, 37 O.O. 243.—*Neglig* 201.

Ohio 1938. "Accident," as the term is ordinarily used in a policy indemnifying automobile owner against liability, is a more comprehensive term than "negligence," and in its common signification means an unexpected happening without intention or design.—*Rothman v. Metropolitan Cas. Ins. Co.*, 16 N.E.2d 417, 134 Ohio St. 241, 12 O.O. 50, 117 A.L.R. 1169.—*Insurance* 2674.

Ohio 1937. "Nuisance" is not synonymous with "negligence," and does not necessarily rest upon degree of care used, although nuisance frequently is consequence of negligent act.—*Selden v. City of Cuyahoga Falls*, 6 N.E.2d 976, 132 Ohio St. 223, 7 O.O. 511.—*Nuis* 7.

Ohio 1937. "Negligence" is a failure to use such care as persons of ordinary prudence are accustomed to exercise under the same or similar circumstances, while a "nuisance" is that which causes hurt, inconvenience, annoyance, or damage to rights of another or the public. "Nuisance" does not rest upon the degree of care used, but upon the injury done, irrespective of the care exercised.—*Selden v. City of Cuyahoga Falls*, 6 N.E.2d 976, 132 Ohio St. 223, 7 O.O. 511.—*Nuis* 7.

Ohio 1935. "Negligence" is failure to comply with legal duty, and, to be actionable, such duty must be imposed for benefit of person injured, and

failure to comply therewith must be proximate cause of injury.—*Meyer Dairy Products Co. v. Gill*, 196 N.E. 428, 129 Ohio St. 633, 3 O.O. 28.—*Neglig* 202.

Ohio 1935. "Negligence" is failure to comply with legal duty, and, to be actionable, such duty must be imposed for benefit of person injured.—*Meyer Dairy Products Co. v. Gill*, 196 N.E. 428, 129 Ohio St. 633, 3 O.O. 28.—*Neglig* 210.

Ohio 1935. Distinction between "negligence" and "negligence per se" is the means and method of ascertainment, in that the former must be found by jury from evidence, while the latter results from violation of specific requirement of law or ordinance; only fact for determination of jury being commission or omission of specific act inhibited or required.—*Swoboda v. Brown*, 196 N.E. 274, 129 Ohio St. 512, 2 O.O. 516.—*Neglig* 1693, 1704.

Ohio 1934. "Negligence" is failure to exercise that degree of care which ordinarily careful and prudent person would exercise under same or similar circumstances.—*Gedeon v. East Ohio Gas Co.*, 190 N.E. 924, 40 Ohio Law Rep. 649, 128 Ohio St. 335.—*Neglig* 232.

Ohio 1930. "Negligence" is defined as the failure to exercise ordinary care, and to constitute negligence there must be the omission of some duty imposed by law. The duty may be imposed by a statute, or by the principles of the common law.—*Stark County Agr. Soc. v. Brenner*, 172 N.E. 659, 32 Ohio Law Rep. 206, 122 Ohio St. 560, 8 Ohio Law Abs. 385.

Ohio 1921. "Negligence" is synonymous with heedlessness, carelessness, thoughtlessness, disregard, inattention, inadvertence, remissness and oversight.—*Payne v. Vance*, 133 N.E. 85, 103 Ohio St. 59.

Ohio 1903. "Negligence" is the violation of an obligation to exercise care. That obligation may inhere in the relations into which parties have been brought by contract, but it is not an incident to the making of the contract.—*Shinkle, Wilson & Kreis Co. v. Birney & Seymour*, 67 N.E. 715, 1 Ohio Law Rep. 42, 1 Ohio Law Rep. 385, 68 Ohio St. 328, 48 W.L.B. 634.

Ohio App. 1 Dist. 1951. Distinction between "negligence" and "negligence per se" is the means and method of ascertainment in that the former must be found by the jury from the conditions and circumstances disclosed by the evidence, while the latter results from violation of specific requirement of law or ordinance, the only fact for determination of jury being commission or omission of specific act inhibited or required.—*Meyer v. Cincinnati St. Ry. Co.*, 100 N.E.2d 437, 89 Ohio App. 169, 45 O.O. 429, 60 Ohio Law Abs. 38, affirmed 104 N.E.2d 173, 157 Ohio St. 38, 47 O.O. 34.—*Neglig* 1693, 1704.

Ohio App. 1 Dist. 1945. A wrongful act cannot be both willful and negligent, but act causing intended injury is "willful", so as to authorize punitive damages, while unintended injury resulting from wrongful act is caused by "negligence," that is,

failure to use due care.—*Petrey v. Liuzzi*, 61 N.E.2d 158, 76 Ohio App. 19, 31 O.O. 347, 43 Ohio Law Abs. 337.—*Damag* 91(2); *Neglig* 201, 275.

Ohio App. 1 Dist. 1940. Liability for “negligence” is based upon conduct involving unreasonable risk to another which must be established by affirmative evidence tending to show that such conduct falls below standard represented by conduct of reasonable men under similar circumstances, and such rule applies to a situation involving a nuisance.—*Carr v. Fox*, 31 N.E.2d 713, 18 O.O. 434, 32 Ohio Law Abs. 103.—*Neglig* 233, 1650; *Nuis* 7.

Ohio App. 1 Dist. 1935. Motorist who, backing on railroad track to turn around at night, was suddenly confronted by locomotive approaching without lights or warning signal, and was struck by locomotive, held not contributorily negligent as matter of law in attempting to drive automobile off track instead of leaping from automobile; though he was guilty of an “error of judgment” which is not synonymous with “negligence.”—*Clifton v. Norfolk & W. Ry. Co.*, 197 N.E. 392, 49 Ohio App. 551, 3 O.O. 384, 19 Ohio Law Abs. 387.—*R R* 350(13).

Ohio App. 2 Dist. 1994. Simple “negligence” contemplates breach of duty of ordinary care.—*Cincinnati Ins. Co. v. Am. Line Bldrs. Apprenticeship Training Program*, 638 N.E.2d 1047, 93 Ohio App.3d 392.—*Neglig* 232.

Ohio App. 2 Dist. 1954. In action for injuries sustained in automobile collision, instruction that “negligence” means failure to use ordinary care and that “ordinary care” means such care as a reasonably prudent person would exercise under same or similar circumstances, was proper.—*Gallagher v. Campbell*, 125 N.E.2d 758, 69 Ohio Law Abs. 378.—*Autos* 246(2.1).

Ohio App. 2 Dist. 1953. “Negligence” does not always mean the lack of ordinary care, but refers to a breach of duty.—*Smith v. Greenville-Dayton Transp. Co. of Greenville*, 131 N.E.2d 437, 71 Ohio Law Abs. 239.—*Neglig* 250.

Ohio App. 2 Dist. 1941. The difference between “wanton misconduct” within meaning of the automobile guest statute, and “negligence”, is one of time and not merely, of degree. *Gen.Code*, § 6308-6.—*Haacke v. Lease*, 41 N.E.2d 590, 35 Ohio Law Abs. 384.—*Autos* 181(1).

Ohio App. 2 Dist. 1941. Under General Code provision imposing liability on board of county commissioners for negligence in not keeping road or bridge in proper repair, a complaint alleging in effect that county commissioners had charge of construction and maintenance of county road, and that a certain culvert was constructed with 2½-foot concrete walls at ends which were 1½ feet inside outer edge of graveled portion of road, and that motorist driving on right side of road, during heavy fall of snow which covered road and obscured concrete walls, of culvert, collided with a concrete wall and was injured, did not state cause of action against board on theory that construction of culvert narrower than the road was “negligence”. *Gen. Code*, § 2408.—*Ditmer v. Board of Com’rs of*

Montgomery County, 37 N.E.2d 404, 34 Ohio Law Abs. 336.—*Autos* 301(3); *Bridges* 46(3).

Ohio App. 2 Dist. 1940. “Negligence” and “wanton misconduct” are independent, and “negligence”, however gross, is not synonymous with “wanton misconduct”.—*Oyster v. Kuhn*, 32 N.E.2d 80, 65 Ohio App. 533, 19 O.O. 244, 33 Ohio Law Abs. 21.—*Neglig* 200.

Ohio App. 3 Dist. 1942. The violation of a statute prescribing a general rule of conduct for the protection of the public is not technically “negligence per se”, but a violation of such general rule of conduct constitutes “negligence” in that it is a failure to exercise ordinary care.—*McKee v. New Idea*, 44 N.E.2d 697, 36 Ohio Law Abs. 563.—*Neglig* 259, 1704.

Ohio App. 3 Dist. 1939. Actions for “willful misconduct” are often treated as “negligence actions”, but an action based upon “willful or wanton misconduct” is different from an action for “negligent conduct” and the difference is one of kind, not merely of degree, since “negligence” does not have for its base either wilfulness or wantonness, and misconduct which is merely negligent is never either willful or wanton.—*Murphy v. Snyder*, 27 N.E.2d 152, 63 Ohio App. 423, 17 O.O. 163, 29 Ohio Law Abs. 59.—*Neglig* 275.

Ohio App. 5 Dist. 1940. “Nuisance” is not synonymous with “negligence”, and does not necessarily rest upon degree of care used, although nuisance frequently is the consequence of a negligent act.—*Kremer v. City of Uhrichsville*, 35 N.E.2d 973, 67 Ohio App. 61, 21 O.O. 91.—*Nuis* 7.

Ohio App. 5 Dist. 1933. “Negligence” is violation of duty imposed by law.—*Canton Motor Coach v. Hall*, 189 N.E. 505, 46 Ohio App. 516, 39 Ohio Law Rep. 305, 15 Ohio Law Abs. 441.—*Neglig* 250.

Ohio App. 6 Dist. 1996. “Recklessness” is not same as “negligence”; “negligence” consists of mere inadvertence, incompetence, unskillfulness, or failure to take precautions to enable actor adequately to cope with possible or probable future emergency; on other hand, conduct is in reckless disregard of safety of another if actor does act or intentionally fails to do act which it is his duty to other to do, knowing or having reason to know of facts which would lead reasonable man to realize, not only that his conduct creates unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent. *Restatement (Second) of Torts* § 500 comment.—*Ickes v. Tille*, 674 N.E.2d 738, 110 Ohio App.3d 438.—*Neglig* 274.

Ohio App. 6 Dist. 1988. For purposes of determining liability of licensor, “wantonness” implies failure to exercise any care toward those to whom a duty of care is owing when the probability that harm will result from that failure is great and the probability is known to the actor; “wanton misconduct” is positive in nature, while mere “negligence” is generally negative in character.—*Wieber v. Rollins*, 562 N.E.2d 908, 55 Ohio App.3d 106.—*Neglig* 275, 1040(3).

Ohio App. 6 Dist. 1940. "Gross negligence", as used in Michigan automobile guest statute, is synonymous with "willful and wanton misconduct", and in conjunction with those words covers only such acts as are committed intentionally, purposely, designedly, as distinguished from "negligence", which is a failure to exercise ordinary care. *Comp. Laws Mich.* 1929, § 4648.—*Witdock v. Gyselbracht*, 36 N.E.2d 40, 67 Ohio App. 120, 21 O.O. 130.—*Autos* 181(1).

Ohio App. 6 Dist. 1939. "Willfulness" and "wantonness" are unlike, and neither is consistent with "negligence" and "carelessness," which are synonymous.—*Caldwell v. Maupin*, 22 N.E.2d 454, 61 Ohio App. 161, 15 O.O. 121.—*Neglig* 275.

Ohio App. 6 Dist. 1939. In spectator's action against promoter of wrestling match for injuries suffered, it is sufficient to state the acts of commission and omission without using the words "willfulness," "wantonness," "negligence," or "carelessness," and the law applicable will then determine whether cause of action has been stated.—*Caldwell v. Maupin*, 22 N.E.2d 454, 61 Ohio App. 161, 15 O.O. 121.—*Theaters* 6(21).

Ohio App. 6 Dist. 1936. "Negligence" consists in doing or omitting to do act in violation of legal duty or obligation due person sustaining injury.—*Leopold v. Williams*, 8 N.E.2d 476, 54 Ohio App. 540, 8 O.O. 294, 23 Ohio Law Abs. 582.—*Neglig* 250.

Ohio App. 6 Dist. 1926. Charge defining negligent omission to do required act held erroneous; "negligence" being want of "ordinary care."—*Liberty Highway Co. v. Callahan*, 157 N.E. 708, 24 Ohio App. 374, 4 Ohio Law Abs. 830.—*Neglig* 232; *Trial* 232(5).

Ohio App. 7 Dist. 1981. Posting of incorrect clearance sign for bridge underpass was failure by county commissioners to exercise reasonable care in carrying out duty required of them by statute and Department of Transportation regulation incorporated in such statute, and was therefore "negligence," not "nuisance." R.C. § 4511.11.—*Covent Ins. Co., Ltd. v. Carroll County Com'rs*, 442 N.E.2d 486, 2 Ohio App.3d 410, 2 O.B.R. 486.—*Autos* 279.

Ohio App. 7 Dist. 1939. The terms "negligence" and "nuisance" are not synonymous but a nuisance may arise out of negligence.—*Dzuracky v. City of Campbell*, 29 N.E.2d 49, 64 Ohio App. 521, 18 O.O. 234.

Ohio App. 8 Dist. 1957. Simple "negligence" is the doing of an intentional act violating a legal duty causing injury to another and "willful negligence" constitutes the purposeful, unlawful injury of another or purposeful doing of a dangerous act or one in violation of a duty imposed by law which in reasonable probability to knowledge of wrongdoer results in injury to another.—*Rogers v. Toni Home Permanent Co.*, 139 N.E.2d 871, 105 Ohio App. 53, 5 O.O.2d 328, 77 Ohio Law Abs. 232, affirmed 147 N.E.2d 612, 167 Ohio St. 244, 4 O.O.2d 291, 75 A.L.R.2d 103.—*Neglig* 201, 275.

Ohio App. 8 Dist. 1943. A municipal corporation's violation of statute, requiring such corporations to keep streets in repair and free from nuisance, sounds in nuisance and not negligence; a "nuisance" signifying anything that causes hurt, inconvenience, annoyance, or damage, and "negligence" being failure to exercise ordinary care, and the two terms not being synonymous. *Gen.Code*, § 3714.—*Corbin v. City of Cleveland*, 57 N.E.2d 427, 74 Ohio App. 199, 29 O.O. 333, 41 Ohio Law Abs. 289, affirmed 56 N.E.2d 214, 144 Ohio St. 32, 28 O.O. 562, 154 A.L.R. 874.—*Mun Corp* 755(1).

Ohio App. 8 Dist. 1930. There is no "negligence" unless it be actionable negligence.—*State ex rel. Morgan v. Rusk*, 174 N.E. 142, 37 Ohio App. 109, 34 Ohio Law Rep. 55, 8 Ohio Law Abs. 504.—*Neglig* 200.

Ohio App. 8 Dist. 1930. "Negligence" is term used on which, if it exists, action can be predicated to recover.—*State ex rel. Morgan v. Rusk*, 174 N.E. 142, 37 Ohio App. 109, 34 Ohio Law Rep. 55, 8 Ohio Law Abs. 504.—*Neglig* 200.

Ohio App. 8 Dist. 1929. Tenant's petition against landlord for injuries caused by breaking of handrail on stairway did not state cause of action, in absence of allegation that landlord was negligent; "negligence" being failure to observe ordinary care under circumstances.—*Pinchefskey v. Goldstone*, 170 N.E. 657, 34 Ohio App. 306, 30 Ohio Law Rep. 504, 7 Ohio Law Abs. 595.

Ohio App. 8 Dist. 1929. Doing what one ought not to do would be "negligence."—*May v. Yurek*, 168 N.E. 59, 32 Ohio App. 293, 29 Ohio Law Rep. 346, 7 Ohio Law Abs. 645.—*Neglig* 200.

Ohio App. 9 Dist. 1952. Where violation of specific requirement created by statute or ordinance is shown to exist, rule of ordinary care is of no consequence, and violator is guilty of "negligence" irrespective of question as to whether his act is such as is deemed to meet and satisfy test of ordinary or reasonable care which would be applied in the absence of such imposition of absolute duty.—*Karr v. McNeil*, 110 N.E.2d 714, 92 Ohio App. 458, 50 O.O. 41.—*Neglig* 259.

Ohio App. 9 Dist. 1949. "Negligence" is the failure to do what a person of ordinary prudence would do under the circumstances of a particular case.—*Campbell v. Hughes Provision Co.*, 94 N.E.2d 273, 87 Ohio App. 151, 42 O.O. 356, affirmed 90 N.E.2d 694, 153 Ohio St. 9, 41 O.O. 107.—*Neglig* 232.

Ohio App. 9 Dist. 1947. The standard of care required in "negligence" cases is the conduct of an ordinarily prudent person acting under the same or similar circumstances.—*Cunningham v. Marable*, 76 N.E.2d 739, 48 Ohio Law Abs. 614, appeal dismissed 74 N.E.2d 256, 148 Ohio St. 276, 35 O.O. 254.—*Neglig* 232.

Ohio App. 9 Dist. 1945. "Negligence" within Federal Employers' Liability Act means the lack of due care under the circumstances, or the failure to do what a reasonable and prudent man would ordinarily have done under the circumstances of the

situation, or doing what such a person under the existing circumstances would not have done. Federal Employers' Liability Act, § 1 et seq., as amended, 45 U.S.C.A. § 51 et seq.—*Beam v. Baltimore & O.R. Co.*, 68 N.E.2d 159, 77 Ohio App. 419, 33 O.O. 292.—*Emp Liab* 14.

Ohio App. 10 Dist. 1999. Distinction between "negligence" and "negligence per se" is the means and method of ascertainment; if a jury is able to determine from a single issue of fact that a defendant has violated a positive and definite legislatively enacted standard of care, then the violation constitutes negligence per se, but where the jury is asked to find the violation of an enactment from a consideration and evaluation of multiple facts and circumstances, negligence per se is not involved.—*Swart v. Ohio Dept. of Rehab. & Corr.*, 728 N.E.2d 428, 133 Ohio App.3d 420.—*Neglig* 259.

Ohio Mun. 1957. "Negligence" is the failure to exercise that degree of care which persons of ordinary care and prudence are accustomed to use under the same or similar circumstances, in order to bring the enterprise engaged in to a safe and successful termination, having due regard for the rights of others and the object to be accomplished.—*Paulson v. B. & L. Motor Freight, Inc.*, 145 N.E.2d 364, 3 O.O.2d 32, 81 Ohio Law Abs. 172, affirmed *Beauchamp v. B. & L. Motor Freight, Inc.*, 152 N.E.2d 334, 106 Ohio App. 530, 6 O.O.2d 237.—*Neglig* 232.

Ohio Mun. 1952. "Negligence" is failure to exercise ordinary care or failure to perform an act required by law.—*City of Dayton v. Brennan*, 112 N.E.2d 837, 64 Ohio Law Abs. 525.—*Neglig* 232, 238.

Ohio Ct.Cl. 1993. "Negligence," as defined by Crime Victim Compensation Act, is not "intentionally tortious" conduct that would justify reduction or denial of victim's reparation award. R.C. §§ 2743.51(M), 2743.60(F).—*In re Walker*, 623 N.E.2d 729, 63 Ohio Misc.2d 242.—*Crim Law* 1220.

Okla. 1958. To constitute actionable "negligence", there must be a lack of care, involving breach of duty to person injured.—*Meyer v. Moore*, 329 P.2d 676, 1958 OK 165.—*Neglig* 250.

Okla. 1951. Failure to do that which an ordinarily prudent person in the exercise of reasonable care would have done under similar circumstances constitutes actionable "negligence."—*Johnson v. Short*, 232 P.2d 944, 204 Okla. 656, 1951 OK 156.—*Neglig* 233.

Okla. 1948. "Negligence" is doing of that which an ordinary prudent person would not have done under existing circumstances or failure to do that which such person would have done under all circumstances.—*Raimer v. Donelson*, 199 P.2d 1018, 200 Okla. 695, 1948 OK 257.—*Neglig* 232.

Okla. 1948. "Negligence" may consist of failure to exercise care, and what is or what is not negligence is ordinarily a question for the jury and not the court especially when the standard of duty is not fixed but variable.—*A & A Cab Operating Co.*

v. Drake, 192 P.2d 1004, 200 Okla. 229, 1948 OK 53.—*Neglig* 230.

Okla. 1947. Failure to do that which an ordinarily prudent person in the exercise of reasonable care would have done under similar circumstances constitutes actionable "negligence."—*Guegel v. Bailey*, 186 P.2d 827, 199 Okla. 441, 1947 OK 273.—*Neglig* 233.

Okla. 1942. "Negligence" comprehends a failure to exercise due care as required by the circumstances of the case, that is, a failure to do what a person of ordinary prudence would have done under the circumstances or the doing of what such a person would not have done under the circumstances.—*Kelly v. Cann*, 136 P.2d 896, 192 Okla. 446, 1942 OK 299.—*Neglig* 231.

Okla. 1942. There is no actionable "negligence" in the absence of a duty neglected or violated.—*Long Const. Co. v. Fournier*, 123 P.2d 689, 190 Okla. 361, 1942 OK 83.

Okla. 1942. "Negligence" comprehends a failure to exercise due care as required by the circumstances of the case, that is, a failure to do what a person of ordinary prudence would have done under the circumstances or the doing of what such a person would not have done under the circumstances.—*Union Transp. Co. v. Lamb*, 123 P.2d 660, 190 Okla. 327, 1942 OK 13.—*Neglig* 231.

Okla. 1941. In action against a pipe line corporation for damages caused by corporation's negligence in permitting oil to escape from its pipe line and flow over plaintiffs' land, proof of escape of oil from line onto plaintiffs' land was sufficient, under rule of "res ipsa loquitur," to shift burden of going forward with proof to corporation was such that all reasonable men would concur in saying that corporation had used due care, issue of negligence was for jury, and jury could infer "negligence," that is, want of due care, from escape of oil and attendant circumstances.—*Shell Pipe Line Corp. v. Hall*, 115 P.2d 137, 189 Okla. 145, 1941 OK 158.—*Ease* 69.

Okla. 1941. In action against a pipe line corporation for damages caused by corporation's negligence in permitting oil to escape from its pipe line and flow over plaintiffs' land, proof of escape of oil from line onto plaintiffs' land was sufficient, under rule of "res ipsa loquitur," to shift burden of going forward with proof to corporation, and unless explanatory evidence of corporation was such that all reasonable men would concur in saying that corporation had used due care, issue of negligence was for jury and jury could infer "negligence," that is, want of due care, from escape of oil and attendant circumstances.—*Shell Pipe Line Corp. v. Hall*, 115 P.2d 137, 189 Okla. 145, 1941 OK 158.—*Ease* 71.

Okla. 1940. The presence of a railroad track on which train may at any time pass is notice of danger to such extent that it is duty of person about to cross track on public highway to exercise caution in so doing, and to look and listen before crossing, and it is "negligence" to omit such ordinary precaution. 66 Okl.St. Ann. § 126.—*Missouri, K. & T.*

Ry. Co. v. Flowers, 101 P.2d 816, 187 Okla. 158, 1940 OK 108.—R R 327(1).

Okla. 1939. "Negligence" is a breach of duty.—Larrimore v. American Nat. Ins. Co., 89 P.2d 340, 184 Okla. 614, 1939 OK 201.—Neglig 250.

Okla. 1936. "Negligence," in its generally accepted meaning, has in it no element of willfulness; but involves a state of mind which is negative; a state of mind in which the person fails to give attention to the character of his acts or omissions or to weigh their probable or possible consequences.—Kile v. Kile, 63 P.2d 753, 178 Okla. 576, 1936 OK 748.

Okla. 1936. To constitute actionable "negligence," there must exist duty of employer to employee, which employer fails to perform.—Munroe v. Schoenfeld & Hunter Drilling Co., 61 P.2d 1045, 178 Okla. 149, 1936 OK 649.—Emp Liab 1.

Okla. 1936. To constitute actionable "negligence," there must exist duty of employer to employee, which employer fails to perform, and injury to employee proximately resulting therefrom.—Munroe v. Schoenfeld & Hunter Drilling Co., 61 P.2d 1045, 178 Okla. 149, 1936 OK 649.—Emp Liab 16.

Okla. 1936. "Negligence" is absence of care according to circumstances of each case.—Wright v. Clark, 61 P.2d 192, 177 Okla. 628, 1936 OK 509.—Neglig 230.

Okla. 1936. "Negligence" is always question for jury when reasonable men may differ as to facts or as to inferences to be drawn therefrom.—Wright v. Clark, 61 P.2d 192, 177 Okla. 628, 1936 OK 509.—Neglig 1694.

Okla. 1935. The word "negligence," as used in the Federal Employers' Liability Act, 45 U.S.C.A. §§ 51-59, is to be construed liberally to fulfill the purposes for which the act was enacted, and may be read to include all the meanings given to it by courts and within the word as ordinarily used, as "negligence" is a word of broad significance and may not readily be defined with accuracy.—St. Louis-San Francisco Ry. Co. v. Pontotoc County Excise Bd., 47 P.2d 177, 172 Okla. 607.

Okla. 1935. "Negligence" is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances, or doing what such a person would not have done.—Abdo v. Mullen, 44 P.2d 102, 173 Okla. 144, 1935 OK 476.

Okla. 1926. Evidence, to justify a finding of "negligence," must show a breach of duty on the part of the defendant such that a reasonable person should have foreseen would as a natural consequence cause an injury; not necessarily would probably cause an injury in the sense more likely to cause an injury than not, but the likelihood must be such that a reasonable person could foresee that injury would result in the ordinary course of things. A mere possibility of the injury is not sufficient, where a reasonable man would not consider injury likely to result from the act as one of its ordinary

and probable results.—Chicago, R.I. & P. Ry. Co. v. West, 254 P. 91, 124 Okla. 147, 1926 OK 141.

Okla. 1926. "Negligence" is the absence of care according to the circumstances of each case, and is always a question for the jury when there is a reasonable doubt as to the facts or as to the inferences to be drawn from them; that is, where reasonable men may differ as to the existence thereof.—Haley v. Bowman, 251 P. 1046, 123 Okla. 48, 1926 OK 882.

Okla. 1923. "Negligence" is defined to be the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances or doing what such person would not have done.—Electric Supply Co. v. Rosser, 214 P. 1068, 88 Okla. 220, 1923 OK 92.

Okla. 1921. "Negligence" is the absence of care according to the circumstances, and what would be negligence under a certain state of facts would not be under a different state of facts. Negligence means merely the want of ordinary or reasonable care according to the circumstances.—Thrasher v. St. Louis & S.F. Ry. Co., 206 P. 212, 86 Okla. 88, 1921 OK 308.

Okla. 1918. "Negligence" is opposed to diligence and signifies the absence of care. It is negative in its nature, implying a failure of duty, and excluding the idea of intentional wrong. The moment a person wills to do an injury he ceases to be negligent.—St. Louis & S. F. R. Co. v. Boush, 174 P. 1036, 68 Okla. 301, 1918 OK 367.

Okla. 1916. "Negligence" is the want of ordinary care by one owing the duty of such care to another.—New York Plate Glass Ins. Co. v. Wright, 160 P. 54, 61 Okla. 47, 1916 OK 806.

Okla. 1913. "Negligence" is failure to do what reasonable and prudent person would ordinarily have done under circumstances, or doing what such person would not have done under circumstances.—Chickasha Cotton Oil Co. v. Brown, 134 P. 850, 39 Okla. 245, 1913 OK 322.—Neglig 233.

Okla. 1912. "Negligence" is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances, or doing what such a person would not have done.—Chicago, R.I. & P. Ry. Co. v. Watson, 127 P. 693, 36 Okla. 1, 1912 OK 675.

Okla. 1912. "Negligence" is a breach of duty. In order for it to exist, there must be both a duty and a breach of it. It is the duty of the court in its instructions to advise the jury of the duties which the law imposes upon the parties, and, where there is conflict in the evidence, it is the function of the jury to determine whether these duties imposed by law have been violated. The jury is the judge of the fact, and not of the law.—Midland Val. R. Co. v. Bailey, 124 P. 987, 34 Okla. 193, 1912 OK 470.

Or. 1984. "Negligence" is conduct falling below standard established for protection of others, or one's self, against unreasonable risk of harm.—Woolston v. Wells, 687 P.2d 144, 297 Or. 548.—Neglig 233.

Or. 1971. "Negligence" is conduct involving an unreasonable risk of harm, and among factors to be considered are likelihood that actor's conduct will injure others, seriousness of injury if it happens, and type of people that might be affected by actor's conduct, such as children, the aged, or the infirm.—*Bertrand v. Palm Springs & European Health Spa, Inc.*, 480 P.2d 424, 257 Or. 532.—Neglig 233.

Or. 1959. Under the definition of "negligence", there must be a duty on the defendant, a failure to perform that duty, and such failure must be the proximate cause of injury and damage to the plaintiff.—*Aiken v. Shell Oil Co.*, 348 P.2d 51, 219 Or. 523.—Neglig 202.

Or. 1955. "Negligence", in absence of statute, is defined as the doing of that thing which a reasonably prudent person would not have done, or the failure to do that thing which a reasonably prudent person would have done, in like or similar circumstances.—*Biddle v. Mazzocco*, 284 P.2d 364, 204 Or. 547.—Neglig 233.

Or. 1955. The term "without due caution or circumspection", within manslaughter act, is regarded as a virtual equivalent of the term "negligence". ORS 163.040(2).—*State v. Wojahn*, 282 P.2d 675, 204 Or. 84.—Homic 708.

Or. 1954. "Negligence" is an infraction of a legal obligation due from one person to another, and where there is no such duty, there can be no negligence.—*Hansen v. Cohen*, 276 P.2d 391, 203 Or. 157, rehearing denied 278 P.2d 898, 203 Or. 157.—Neglig 210.

Or. 1954. The term "negligence" when employed in common carrier cases denotes failure to exercise the highest degree of care.—*Gedney v. Clark*, 268 P.2d 357, 201 Or. 67.—Carr 280(1).

Or. 1954. In action by passenger against taxicab company for personal injuries allegedly sustained when taxicab was struck by another automobile, instructions that company owed passenger duty of exercising very high degree of diligence, but which referred to requirement of showing company's "negligence", adequately informed jury of company's duty to exercise highest degree of care.—*Gedney v. Clark*, 268 P.2d 357, 201 Or. 67.—Carr 321(1).

Or. 1943. A surgeon's use of non-sterile or unclean instruments in performing operation constitutes "negligence".—*Clemens v. Smith*, 134 P.2d 424, 170 Or. 400.—Health 665.

Or. 1943. It is "negligence" to use an instrumentality which actor knows or should know to be so defective that its use involves an unreasonable risk of harm to others.—*Doherty v. Arcade Hotel*, 134 P.2d 118, 170 Or. 374.—Neglig 253.

Or. 1943. Evidence was insufficient to present question for jury as to whether hotel's use of porcelain handle on hot water faucet constituted "negligence", rendering hotel liable for injuries sustained by guest as result of cutting his hand when handle broke, where it was not shown that hotel's officers knew or should have known that porcelain handles

were unsafe and that safer equipment was available.—*Doherty v. Arcade Hotel*, 134 P.2d 118, 170 Or. 374.—Inn 10.14.

Or. 1942. The failure to remove a sponge which should never have been inserted is evidence of "negligence" in the general sense involving a failure to exercise reasonable care under all the circumstances, and it is evidence of "negligence" when subjected to test employed in case of physicians and surgeons.—*Carruthers v. Phillips*, 131 P.2d 193, 169 Or. 636.—Health 823(5).

Or. 1941. The arrangement of merchandise in a pile in store so that there is a possibility that merchandise may fall into aisle is not "negligence" unless storekeeper permits merchandise to remain in aisle after he has received timely notice of its presence there or fails to make visits at reasonable intervals to the place so as to acquaint himself with its condition.—*Lee v. Meier & Frank Co.*, 114 P.2d 136, 166 Or. 600.—Neglig 1119.

Or. 1940. Instruction, defining "gross negligence" as "negligence" that borders on recklessness or wantonness and as applied to the operation of motor vehicles, implies a positive disregard of the rules of diligence, being such a want of care that would raise an inference of conscious indifference of consequences, was not erroneous as including willfulness and wantonness as essential elements of "gross negligence".—*Lee v. Hoff*, 97 P.2d 715, 163 Or. 374.—Autos 246(2.1).

Or. 1937. "Negligence" is the absence of care according to the circumstances. The same act may be negligent or not negligent, for it is not the act that connotes the negligence, but the circumstances. The terms "ordinary care" and "reasonable prudence," and such like terms, as applied to the conduct of affairs of men, have a relative significance, and cannot be arbitrarily defined. What may be deemed ordinary care in one case may, under different surroundings and circumstances, be "gross negligence".—*Storm v. Thompson*, 64 P.2d 1309, 155 Or. 686.

Or. 1935. General test of "negligence" is that which an ordinarily careful person would or would not do.—*Lindekugel v. Spokane, P. & S. Ry. Co.*, 42 P.2d 907, 149 Or. 634, 99 A.L.R. 721.—Neglig 232.

Or. 1934. Amended complaint, in death action, charging that defendant's abandonment of decedent, while she was in state of acute alcoholism brought about by defendant's wrongful acts, was proximate cause of her death, where original complaint alleged defendant gave decedent liquor in such large quantities as to cause acute alcoholism, held not to set forth new cause of action, but was merely additional specification of "negligence".—*Ibach v. Jackson*, 35 P.2d 672, 148 Or. 92.—Int Liq 306; Plead 248(11).

Or. 1930. "Negligence" involves breach of legal duty.—*Sander v. California Oregon Power Co.*, 291 P. 365, 133 Or. 571.—Neglig 250.

Or. 1927. The violation of a law will be deemed to constitute "negligence" in itself.—*Noble v. Sears*, 257 P. 809, 122 Or. 162.

Or. 1927. Where statute requiring the performance of an act controls, failure to do that which it commands to be done, or doing of that which is forbidden, constitutes "negligence."—*Santoro v. Brooks*, 254 P. 1019, 121 Or. 424.

Or. 1915. The acts of omission which constitute "negligence" under the Employers' Liability Act are failure to use care in selection and inspection of material, in erection or maintenance of scaffolding or other structure more than 20 feet from the ground, failure to provide a safety rail or other device for protection of employes on such structures, failure to cover dangerous machinery, shafts, or openings, failure to provide a system of signals, failure to use enumerated precautions as to electrical work and contrivances, failure to use every practicable device for the protection of employes in dangerous employments, and failure to use every practicable care and precaution for the safety of employes.—*Lang v. Camden Iron Works*, 146 P. 964, 77 Or. 137.

Or. 1910. "Negligence" is the breach of legal duty. It is immaterial whether the duty is one imposed by the rule of common law requiring exercise of ordinary care not to injure another, or is imposed by statute designed for the protection of others. The only difference is that in the one case the measure of legal duty is to be determined upon common-law principles, while in the other the statute constitutes conclusive evidence of negligence, or, in other words, negligence per se. The sale of kerosene in violation of Laws 1903, p. 103, § 2, requiring the names and grades of distillates of petroleum to be marked on the receptacles in which they are sold, and making it a misdemeanor not to do so, is "negligence" per se.—*Peterson v. Standard Oil Co.*, 106 P. 337, 55 Or. 511, Am. Ann. Cas. 1912A, 625.

Pa. 1998. "Negligence" is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances.—*Martin v. Evans*, 711 A.2d 458, 551 Pa. 496, reconsideration and reargument denied.—Neglig 232.

Pa. 1983. Statutory definition of "negligence" for purposes of the Crimes Code does not require a finding of gross negligence before one can be guilty of criminal negligence. 18 Pa.C.S.A. § 302(b)(3, 4).—*Com. v. Lobiondo*, 462 A.2d 662, 501 Pa. 599.—Neglig 1802.

Pa. 1958. "Negligence" is want of due care which a reasonable man would exercise under circumstances.—*Gift v. Palmer*, 141 A.2d 408, 392 Pa. 628.—Neglig 233.

Pa. 1954. Payment by bank of check after notice from depositor to stop payment is a failure to exercise due care, precaution and vigilance, and constitutes "negligence", even though failure to exercise proper care was due to inadvertence, accident or oversight.—*Thomas v. First Nat. Bank of Scranton*, 101 A.2d 910, 376 Pa. 181.—Banks 139.

Pa. 1953. "Negligence" consists of inattention or inadvertence whereas "wantonness" exists where danger to plaintiff though realized is so recklessly disregarded, that even though there be no actual intent there is at least a willingness to inflict injury or a conscious indifference to perpetration of harm.—*Zawacki v. Pennsylvania R. Co.*, 97 A.2d 63, 374 Pa. 89.—Neglig 200, 275.

Pa. 1953. "Negligence" consists of inattention or inadvertence, but "wantonness" exists where danger to plaintiff, though realized, is so recklessly disregarded that, even though there be no actual intent, there is at least willingness to inflict injury and conscious indifference to perpetration of the wrong.—*Hogg v. Bessemer & L. E. R. Co.*, 96 A.2d 879, 373 Pa. 632.

Pa. 1952. "Negligence" is the absence or want of care which reasonable man would exercise under circumstances.—*Lanni v. Pennsylvania R. Co.*, 88 A.2d 887, 371 Pa. 106.—Neglig 233.

Pa. 1952. "Negligence" consists of inattention or inadvertence, whereas "wantonness" exists where the danger to the plaintiff, though realized, is so recklessly disregarded that, even though there be no actual intent, there is at least a willingness to inflict injury, a conscious indifference to the perpetration of the wrong.—*Sankey v. Young*, 88 A.2d 94, 370 Pa. 339.—Neglig 200, 275.

Pa. 1952. "Negligence" consists of inattention or inadvertence, whereas "wanton misconduct" exists where danger to another than person guilty thereof, though realized, is so recklessly disregarded as to show at least willingness to inflict injury or conscious indifference to perpetration of wrong, though there is no actual intent to injure.—*Sankey v. Young*, 88 A.2d 94, 370 Pa. 339.—Neglig 200.

Pa. 1951. "Negligence" is want of care under circumstances.—*Dahlstrom v. Shrum*, 84 A.2d 289, 368 Pa. 423.—Neglig 230.

Pa. 1950. "Negligence" consists of inattention or inadvertence, whereas "wanton misconduct" exists where danger to another than person guilty thereof, though realized, is so recklessly disregarded as to show at least willingness to inflict injury or conscious indifference to perpetration of wrong, though there is no actual intent to injure.—*Eposito v. Philadelphia Transp. Co.*, 70 A.2d 267, 363 Pa. 506.—Neglig 200, 275.

Pa. 1949. "Nuisance" and "negligence" are frequently closely related, nuisance presupposing negligence when omission to remove the nuisance after notice constitutes negligence.—*Reedy v. City of Pittsburgh*, 69 A.2d 93, 363 Pa. 365.—Nuis 7.

Pa. 1949. "Negligence" consists of inattention or inadvertence.—*Fitsko v. Gaughenbaugh*, 69 A.2d 76, 363 Pa. 132.—Neglig 200.

Pa. 1949. The terms "negligence" and "accident" are not synonymous, but accident and its synonyms, "casualty" and "misfortune," may proceed or result from negligence or other cause known or unknown.—*Springfield Tp. v. Indemnity*

Ins. Co. of North America, 64 A.2d 761, 361 Pa. 461.—Neglig 440(1).

Pa. 1948. Under New Jersey common-law rule or test of negligence, which is essentially the same in Pennsylvania, “negligence” is failure of due care in the circumstances.—*Haskey v. Williams*, 60 A.2d 32, 360 Pa. 78.—Neglig 231.

Pa. 1948. An owner who permits the roof and supports of roof of his building to become rotten and its nails or bolts rusted so that roof may fall during storms that occasionally happen is guilty of “negligence” which is defined as want of care under the circumstances.—*Kimble v. Mackintosh Hemp-hill Co.*, 59 A.2d 68, 359 Pa. 461.—Neglig 1116.

Pa. 1948. “Negligence” is absence or want of care under the circumstances, and no absolute standard can be fixed by law, but every reasonable precaution suggested by experience and the known danger ought to be taken, and a higher degree of care is required in dealing with a dangerous agency.—*Maternia v. Pennsylvania R. Co.*, 56 A.2d 233, 358 Pa. 149.—Neglig 233, 305.

Pa. 1947. “Wanton misconduct” differs from “negligence”, however gross, not merely in degree but in kind, in that “negligence” consists of inattention or inadvertence, whereas “wantonness” exists where danger to plaintiff, though realized, is so recklessly disregarded that even though there be no actual intent, there is at least a willingness to inflict injury.—*Rich v. Petersen Truck Lines*, 53 A.2d 725, 357 Pa. 318.—Neglig 275.

Pa. 1947. The only possible foundation for an action under the Jones Act is “negligence” which should not be given a technically restricted meaning but should include all the meanings given to it by courts and comprehended within the word as ordinarily used. Federal Employers’ Liability Act, § 1, 45 U.S.C.A. § 51; Jones Act, 46 U.S.C.A. § 688.—*Rankin v. Iron City Sand & Gravel Corp.*, 52 A.2d 455, 356 Pa. 548.—Seamen 29(1).

Pa. 1947. “Negligence” is the absence of care according to the circumstances, and it is a question for jury where there is a reasonable doubt either as to facts or inferences of fact to be drawn from the testimony, but, when facts constituting negligence are either admitted or conclusively established by undisputed evidence, court must declare the law applicable thereto.—*Beck v. Stanley Co. of America*, 50 A.2d 306, 355 Pa. 608.—Neglig 230, 1694.

Pa. 1943. “Wanton misconduct” differs from “negligence,” however gross, not merely in degree but in kind, in that “negligence” consists of inattention or inadvertence whereas “wantonness” exists where danger to plaintiff, though realized, is so recklessly disregarded that even though there be no actual intent there is at least a willingness to inflict injury.—*Kasanovich v. George*, 34 A.2d 523, 348 Pa. 199.—Neglig 275.

Pa. 1941. “Negligence” is want of care under circumstances.—*Bailey v. Alexander Realty Co.*, 20 A.2d 754, 342 Pa. 362.—Neglig 230.

Pa. 1941. A more culpable degree of negligence is required to establish a criminal homicide than is required in a civil action for damages, and contributory negligence is not a defense, but criminal responsibility for a negligent homicide must ordinarily be determined pursuant to the general principles of “negligence”, the fundamental of which is knowledge, actual or imputed, that the act of the slayer tended to endanger life, and it must appear that the death was not the result of misadventure but the natural and probable result of a reckless or culpably negligent act, and that the fatal consequence of the negligent act could reasonably have been foreseen.—*Com. v. Aurick*, 19 A.2d 920, 342 Pa. 282.—Homic 708.

Pa. 1940. As respects liability of building owner for injuries sustained by plaintiff in fall down stairs where the stairway was sufficiently lighted and there were walls on each side, the absence of a handrail was not “negligence”.—*Mammana v. Easton Nat. Bank*, 12 A.2d 918, 338 Pa. 225.—Neglig 1110(3).

Pa. 1940. Under provision of Uniform Fiduciaries Act concerning liability of a bank for accepting a deposit in a trustee’s personal account of checks signed by trustee as fiduciary and for paying checks drawn on such account, mere failure to make inquiry, even though there are suspicious circumstances, does not constitute “bad faith” unless the failure is due to deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a vice or defect in transaction, and “bad faith” or dishonesty is, unlike “negligence”, willful. 20 P.S. §§ 3311(1) (a), 3393.—*Davis v. Pennsylvania Co. for Insurances on Lives and Granting Annuities*, 12 A.2d 66, 337 Pa. 456.—Banks 130(1).

Pa. 1939. “Negligence” is a legal conclusion, and need not be specifically averred, but it is sufficient if facts in statement are set forth from which a clear and unmistakable inference of negligence can be drawn.—*Pennsylvania R. Co. v. City of Pittsburgh*, 6 A.2d 907, 335 Pa. 449.—Plead 8(17).

Pa. 1939. The test of “negligence” is whether the wrongdoer could have anticipated and foreseen the likelihood of harm resulting from his act or omission.—*Scurfield v. Federal Laboratories*, 6 A.2d 559, 335 Pa. 145.—Neglig 213.

Pa. 1938. “Negligence” is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby the other person suffers injury.—*Caulton v. Eyre & Co.*, 199 A. 136, 330 Pa. 385.—Neglig 230.

Pa. 1938. “Recklessness” implies conscious appreciation of the probable extent of danger or risk incident to contemplated action, whereas “negligence,” in the legal sense, implies knowledge only of a probable source of danger in the act.—*Reilly v. City of Philadelphia*, 195 A. 897, 328 Pa. 563.—Neglig 274.

Pa. 1937. "Negligence" is failure to conform to the standard of the reasonably prudent man.—*Altomari v. Kruger*, 188 A. 828, 325 Pa. 235.

Pa. 1934. Test of "negligence" being whether party acted as reasonably prudent man would have under circumstances, if there is any doubt on subject, considering all conditions, jury should resolve doubt.—*Frank v. Markley*, 173 A. 186, 315 Pa. 257.—*Neglig* 1694.

Pa. 1934. Test of "negligence" is whether party acted as reasonably prudent man would have under circumstances.—*Frank v. Markley*, 173 A. 186, 315 Pa. 257.—*Neglig* 233.

Pa. 1932. "Negligence" is want of care under circumstances.—*Harkins v. Somerset Bus Co.*, 162 A. 163, 308 Pa. 109.—*Neglig* 230.

Pa. 1931. "Circumstances" determining whether "negligence," defined as want of care under circumstances, exists embraces all attendant facts, including operation of forces of nature relating to central event.—*Pope v. Reading Co.*, 156 A. 106, 304 Pa. 326.—*Neglig* 200.

Pa. 1928. Publication, to be punishable as libel, must be malicious or negligent; 'malice'; "negligence" (Pa. St. 1920, § 7926; Const. art. 1, § 7). At common law, under Act March 31, 1860, § 24 (P. L. 390; Pa. St. 1920, § 7926), and under Const. art. 1 § 7, publication, to be punishable as libelous, must be malicious or negligent; 'malice' in a legal sense being implied and established from publication of false or defamatory matter, though person making it is not moved by express or actual malice, and "negligence," as used in Constitution, meaning want of probable cause which arises from proper occasion, proper motive, proper manner, and that accused had reasonable cause to believe substance of publication true. [Ed. Note:—For other definitions, see Words and Phrases, First and Second Series, Malice; Negligence.]—*Com. v. Foley*, 141 A. 50, 292 Pa. 277.—*Libel* 143.

Pa. 1925. Care required in dealing with dangerous agency; "negligence." "Negligence" is absence or want of care under circumstances involved, a higher degree of care being required in dealing with a dangerous agency than in ordinary matters.—*Fredericks v. Atlantic Refining Co.*, 127 A. 615, 282 Pa. 8, 38 A.L.R. 666.—*Neglig* 16.

Pa. 1925. "Negligence" in absence or want of care under circumstances involved, a higher degree of care being required in dealing with a dangerous agency than in ordinary matters.—*Fredericks v. Atlantic Refining Co.*, 127 A. 615, 282 Pa. 8, 38 A.L.R. 666.—*Neglig* 305.

Pa. 1906. "Negligence" is the want of care under the circumstances. But there can be no recovery of damages, unless there has been a breach of legal duty.—*Welch v. Carlucci Stone Co.*, 64 A. 392, 215 Pa. 34.

Pa. 1905. An act cannot be held to be negligent when there was no reasonable ground for supposing that it would cause injury to any one. "Negligence" cannot be imputed because of the failure to per-

form a duty so suddenly and unexpectedly arising that there is no opportunity to comprehend the situation and act according to the exigency.—*McKee v. Harrisburg Traction Co.*, 60 A. 498, 211 Pa. 47.

Pa. 1905. "Negligence" is absence of care according to the circumstances. There was no negligence on the part of a contractor in placing a mortar bed on the side of a street, near which he was erecting a building, where the city, under its powers, had granted him such privilege.—*White v. Roydhouse*, 60 A. 316, 211 Pa. 13.

Pa. 1893. The term "negligence" includes a failure to perform a defined duty.—*Baker v. Westmoreland & C. Nat. Gas Co.*, 27 A. 789, 157 Pa. 593, 33 W.N.C. 161, 41 P.L.J. 133.

Pa. 1891. "Negligence," like ownership, is a complex conception. Just as the latter imports the existence of certain facts, and also the consequence (protection against all the world) which the law attaches to those facts, the former imports the existence of certain facts (conduct), and also the consequence (liability) which the law attaches to those facts. This conception involves as its main element the subordinate conceptions of a duty resting upon one person respecting his conduct towards others, a violation of such duty through heedlessness or inattention on the part of him on whom it rests, a resulting legal injury or harm to others as an effect, and the legal liability consequent thereon. Accordingly, as a legal conception, negligence has been defined as follows: A breach of duty, unintentional, and proximately producing injury to another possessing equal rights. But neither in the textbooks nor judicial decisions is the word "negligence" used at all times as standing for all the elements of this entire, complex conception.—*Duffee v. Mansfield*, 21 A. 675, 141 Pa. 507.

Pa.Super. 1992. Subcontractor's substandard performance which contributed to massive property damage in homes was "negligence", not an "accident" or "occurrence" which was a prerequisite under insurance contract for reimbursement.—*Solar Equipment Leasing Corp. v. Pennsylvania Manufacturers' Ass'n Ins. Co.*, 606 A.2d 522, 414 Pa.Super. 110.—*Insurance* 2275.

Pa.Super. 1956. "Negligence" is the doing of that which a reasonably prudent man would not do under the circumstances, or the failing to do that which a reasonably prudent man would do under the circumstances.—*Aquadro v. Crandall-McKenzie & Henderson, Inc.*, 128 A.2d 147, 182 Pa.Super. 435.—*Neglig* 233.

Pa.Super. 1953. "Negligence" is the doing of that which a reasonably prudent man would not do under the circumstances, or the failing to do that which a reasonably prudent man would do under the circumstances.—*Schentzel v. Philadelphia Nat. League Club*, 96 A.2d 181, 173 Pa.Super. 179.—*Neglig* 233.

Pa.Super. 1953. Failure of operator of baseball game to construct protective screen in front of upper stand seats on first base of baseball diamond

or to warn woman spectator, who was attending baseball game for first time, of danger from foul balls, was not "negligence."—*Schentzel v. Philadelphia Nat. League Club*, 96 A.2d 181, 173 Pa.Super. 179.—*Theaters* 6(11).

Pa.Super. 1953. "Negligence" is the absence or want of care which reasonable man would exercise under circumstances.—*Blake v. Fried*, 95 A.2d 360, 173 Pa.Super. 27.—*Neglig* 233.

Pa.Super. 1953. "Negligence" is conduct which falls below the standard established by law for protection of others against unreasonable risk and necessarily involves foreseeable risk, a threatened danger of injury, and conduct unreasonable in proportion to the danger.—*Blake v. Fried*, 95 A.2d 360, 173 Pa.Super. 27.—*Neglig* 233.

Pa.Super. 1949. "Recklessness" implies conscious appreciation of probable extent of danger or risk incident to contemplated action, while "negligence" in the legal sense implies knowledge only of a probable source of danger in the act.—*La Marra v. Adam*, 63 A.2d 497, 164 Pa.Super. 268.—*Neglig* 274.

Pa.Super. 1945. It is "negligence" to use an instrumentality, whether a human being or thing, which the actor knows or should know to be so incompetent, inappropriate, or defective that its use involves an unreasonable risk of harm to others.—*Schell v. Miller North Broad Storage Co.*, 42 A.2d 180, 157 Pa.Super. 101, opinion adopted 45 A.2d 53, 353 Pa. 319.—*Neglig* 305.

Pa.Super. 1943. Proof of skidding of an automobile is not of itself "negligence", and it must be shown that the skidding is the result of negligent conduct.—*Valley Motor Transit Co. v. Allison*, 33 A.2d 485, 153 Pa.Super. 221.—*Autos* 168(1).

Pa.Super. 1942. To run down a pedestrian who has been standing upon the highway in plain view for sufficient length of time to have been seen and avoided is evidence of "negligence" on the part of motorist.—*Pinto v. Bell Fruit Co.*, 24 A.2d 768, 148 Pa.Super. 132.—*Autos* 160(1).

Pa.Super. 1941. The skidding of an automobile does not of itself establish "negligence".—*Knoble v. Ritter*, 20 A.2d 848, 145 Pa.Super. 149.

Pa.Super. 1941. The test of "negligence" is whether the wrongdoer could have anticipated and foreseen the likelihood of harm resulting from his act or omission.—*Saar v. Saar*, 17 A.2d 745, 143 Pa.Super. 528.—*Neglig* 213.

Pa.Super. 1941. The existence of a terrazzo step at edge of theater lobby, which was worn smooth and slightly sloping, did not in itself convict theater operator of "negligence" as ground for recovery by patron injured in fall, and if step was properly constructed a prudent owner was not bound to foresee that one using the step in exercise of ordinary care would be exposed to unnecessary or unreasonable danger.—*Copelan v. Stanley Co. of America*, 17 A.2d 659, 142 Pa.Super. 603.—*Theaters* 6(16).

Pa.Super. 1941. "Negligence" is the lack of due care under the circumstances.—*Horvath v. Morrison*, 17 A.2d 656, 143 Pa.Super. 360, reversed 25 A.2d 324, 344 Pa. 434.—*Neglig* 231.

Pa.Super. 1941. Customary methods or conduct are not conclusive or controlling tests of "negligence", but merely circumstances to be considered with other circumstances in determining the question.—*Hartman v. Miller*, 17 A.2d 652, 143 Pa.Super. 143.

Pa.Super. 1940. "Negligence" in the legal sense implies knowledge only of a probable source of danger in the act.—*Schu v. City of Pittsburgh*, 16 A.2d 752, 143 Pa.Super. 101, opinion adopted 19 A.2d 409, 341 Pa. 324.

Pa.Super. 1940. It is "negligence" expressly or impliedly to invite one to do an act which the invitor knows or should know to be dangerous.—*Curt v. Ziman*, 12 A.2d 802, 140 Pa.Super. 25.—*Neglig* 482.

Pa.Super. 1940. There cannot be "negligence" unless there is a breach of duty.—*Rapczynski v. W. T. Cowan, Inc.*, 10 A.2d 810, 138 Pa.Super. 392.

Pa.Super. 1939. The violation of statute prohibiting parking of vehicles in such manner as to prevent free movement of a street car does not constitute "negligence" precluding recovery for injury from collision unless violation has definite casual relation to injury. 75 P.S. § 612.—*Metz v. Pittsburgh Rys. Co.*, 7 A.2d 505, 135 Pa.Super. 534.—*Urb R R* 27.

Pa.Super. 1934. "Negligence" is lack of due care under the circumstances.—*Martin v. Davis*, 170 A. 307, 111 Pa.Super. 420.—*Neglig* 231.

Pa.Super. 1931. "Negligence" is the omission of some-duty which one party owes to another, thereby causing an injury.—*Tredway v. Ingram*, 157 A. 4, 102 Pa.Super. 459.

Pa.Cmwlt. 1989. Funeral director's statements accusing priest of recommending funeral homes was not "gross incompetency," "negligence," "misconduct in carrying on of the profession," or "gross immorality" within meaning of statute permitting Board of Funeral Directors to suspend license for those reasons; record indicated that it would be possible for reasonable person to draw subjective opinion that priest was recommending another funeral home. 63 P.S. § 479.11(a)(5, 9).—*Ciavarelli v. Com., State Bd. of Funeral Directors*, 565 A.2d 520, 129 Pa.Cmwlt. 305.—*Licens* 38.

Pa.Cmwlt. 1988. "Negligence" is failure to exercise care which reasonable person would exercise under circumstances; amount of care required must always be proportionate to seriousness of consequences which are reasonably to be anticipated as result of conduct in question.—*Yanofsky v. Com., State Horse Racing Com'n*, 537 A.2d 92, 113 Pa.Cmwlt. 323.—*Neglig* 233.

R.I. 1956. Absence of ordinary care is "negligence".—*Lawton v. Vadenais*, 122 A.2d 138, 84 R.I. 116.—*Neglig* 232.

R.I. 1939. "Negligence" is the want of that care which the law requires a person to exercise and exact as a duty and hence negligence in fact is not "negligence" in law, unless party can show that some duty to him is violated.—*Therrien v. First Nat. Stores*, 6 A.2d 731, 63 R.I. 44.—Neglig 210.

R.I. 1938. In 12 year old boy's action for injuries inflicted by another boy while playing a game, an instruction requiring recovery to be based on proof that plaintiff was injured as the result of defendant's "misconduct" was prejudicially erroneous since action was based on "negligence" which implied an error in judgment rather than a willful doing of an act with a wrong intention.—*Mandella v. Mariano*, 200 A. 478, 61 R.I. 163.—App & E 1064.1(8); Neglig 1729.

R.I. 1938. Generally, "negligence" is a relative term implying failure to comply with an indefinite rule of conduct in the circumstances of any particular case and intent is not an essential element.—*Mandella v. Mariano*, 200 A. 478, 61 R.I. 163.—Neglig 230.

R.I. 1912. "Negligence" consists in the violation of a duty owed by one person to another, whether the duty arises from relations of the parties, or is created by statute under the police power of the state.—*Wells v. Joslin Mfg. Co.*, 82 A. 258, 33 R.I. 498.

S.C. 1997. In criminal case, state cannot rely on civil concepts of "negligence" and "recklessness," that is, statutory violations, to meet its burden of proving defendant's state of mind; terms "negligence" and "recklessness" as used in the civil law and in the criminal law are neither equivalent nor interchangeable.—*State v. Rowell*, 487 S.E.2d 185, 326 S.C. 313, rehearing denied, certiorari denied 118 S.Ct. 319, 522 U.S. 923, 139 L.Ed.2d 246.—Crim Law 23.

S.C. 1978. While the often critical distinctions between the terms "recklessness," "wilfulness" and "wantonness" should not be dispensed with, the Legislature, in using the term "negligence" in the statute which provides that contributory "negligence" shall not bar recovery in a motor vehicle accident action intended to use that term in its broadest sense; the Legislature intended that the jury evaluate the culpability of each party as compared to that of the other, barring plaintiff from recovery only if his fault was greater than that of defendant. Code 1976, § 15-1-300.—*Stockman v. Marlowe*, 247 S.E.2d 340, 271 S.C. 334.—Autos 226(1), 226(3).

S.C. 1973. "Negligence" is the failure to use "due care," which is that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances.—*Hart v. Doe*, 198 S.E.2d 526, 261 S.C. 116.—Neglig 231.

S.C. 1947. "Negligence" is the failure to do what a reasonable and prudent person would ordinarily have done under circumstances of situation or doing what such a person under existing circumstances would not have done, that is, the duty is dictated and measured by exigencies of occasion.—

Jones v. American Fidelity & Cas. Co., 43 S.E.2d 355, 210 S.C. 470.—Neglig 233.

S.C. 1944. "Negligence" is the want of due care; and "due care" means commensurate care under all circumstances, and want of due care may consist in doing wrong thing at time and place in question, or it may arise from inaction when something should have been done, and degree of care which a reasonably prudent man exercises varies with exigencies of occasion.—*Thomas v. Atlantic Greyhound Corp.*, 29 S.E.2d 196, 204 S.C. 247.—Neglig 231.

S.C. 1940. "Negligence" is the want of due care and is generally a mixed question of law and fact.—*Shields v. Chevrolet Truck*, 12 S.E.2d 19, 195 S.C. 437.—Neglig 231, 1693.

S.C. 1940. In automobile guest statute providing that no person transported by owner or operator of a motor vehicle as his guest shall have a cause of action for injury, death or loss in case of accident unless such accident shall have been intentional on the part of the owner or operator or caused by his heedlessness "or" his reckless disregard of rights of others, the quoted word "or" should be construed as "and," since the word "heedlessness" is equivalent to "negligence." Code 1932, § 5908.—*Cummings v. Tweed*, 10 S.E.2d 322, 195 S.C. 173.—Autos 181(1).

S.C. 1940. "Negligence" consists in failure to perform some duty owed by one person to another.—*Williamson v. South Carolina Elec. & Gas Co.*, 7 S.E.2d 516, 193 S.C. 11.—Neglig 210.

S.C. 1940. "Negligence" is the failure to exercise due care or that care which a person of ordinary reason or prudence would exercise under given circumstances.—*Fabian v. Rephan*, 7 S.E.2d 223, 192 S.C. 483.

S.C. 1938. The "neglect" mentioned in the statute giving right of action against a municipality to one injured through defect in street, but providing that municipality shall not be liable unless such defect was occasioned by its neglect, is the same as "negligence," which is want of ordinary care, and may consist of omission or nonaction. Code 1932, § 7345.—*Bruce v. City of Spartanburg*, 197 S.E. 823, 187 S.C. 322.—Mun Corp 762(1).

S.C. 1936. Whether duty to exercise ordinary care not to injure another is imposed by common law or statute, failure to perform duty constitutes "negligence" and renders party liable for injuries resulting therefrom.—*Crawford v. Atlantic Coast Line R. Co.*, 184 S.E. 569, 179 S.C. 264.—Neglig 232, 238.

S.C. 1933. "Negligence" signifies inattention or unconscious failure to realize danger of the situation.—*Driggers v. Southern Ry. Co.*, 168 S.E. 185, 169 S.C. 157.

S.C. 1932. "Negligence" is failure to exercise due care, while "gross negligence" is failure to exercise slight care.—*Anderson v. Ballenger*, 164 S.E. 313, 166 S.C. 44.—Neglig 273.

S.C. 1930. One failing to exercise due care which person of ordinary prudence would exercise

in circumstances is guilty of "negligence."—*Burnette v. Augusta Coca-Cola Bottling Co.*, 154 S.E. 645, 157 S.C. 359.—Neglig 231.

S.C. 1929. "Negligence" is generally a question of fact.—*Bober v. Southern Ry. Co.*, 149 S.E. 257, 151 S.C. 459.—Neglig 1693.

S.C. 1929. "Negligence" is want of due care.—*Bober v. Southern Ry. Co.*, 149 S.E. 257, 151 S.C. 459.—Neglig 231.

S.C. 1926. Failure to exercise due care is "negligence" and, when proximate cause of injury, entitles injured person to damages.—*Wannamaker v. Traywick*, 134 S.E. 234, 136 S.C. 21.—Neglig 231.

S.C. 1911. "Negligence" is failure to use that degree of care which one of ordinary intelligence and prudence might reasonably be expected to use in the particular circumstances.—*Lundy v. Southern Bell Tel. & Tel. Co.*, 72 S.E. 558, 90 S.C. 25.—Neglig 233.

S.C. 1908. "Negligence" is in the main a question of fact, or rather whether it exists or not in a special case is a question of fact for the jury. All that the law has ever determined on the subject is that it consists in failing to bestow due care to the matter in hand—failing to do that which due care requires to be done, or doing that which such care forbids. Whether a trolley car conductor was negligent in failing to assist a passenger onto the car is a question of fact, depending upon all the circumstances as they appeared to the conductor at the time, or as they should have appeared to a person in the exercise of that degree of care which the law requires him to exercise.—*Richardson v. Augusta & A. Ry. Co.*, 61 S.E. 83, 79 S.C. 535.

S.C. 1906. Though the word "wanton" is not an apt adjective in describing "negligence," still, when so used, the expression imports both wantonness and negligence.—*Campbell v. Western Union Telegraph Co.*, 54 S.E. 571, 74 S.C. 300.

S.C. 1905. "Negligence" is want of due care.—*Wofford v. Clinton Cotton Mills*, 51 S.E. 918, 72 S.C. 346.—Neglig 231.

S.C. 1905. An instruction that "willful" is what the word implies, it means an act proceeding from a will, done of a purpose, an intention to do it, and that "willfulness" is an act which proceeds from the will so as to make the act a purpose act, was not error, where the court in connection therewith illustrated the difference between "negligence" and "willfulness."—*Talbert v. Charleston & W.C. Ry. Co.*, 51 S.E. 564, 72 S.C. 137.

S.C. 1902. "Negligence" means a want of care. "Ordinary negligence" means a want of ordinary care. Negligence by omission—by leaving undone what ought to have been done—may be defined thus: Failing to do what a man of ordinary prudence would or should have done under the circumstances.—*Oliver v. Columbia, N. & L.R. Co.*, 43 S.E. 307, 65 S.C. 1.

S.C.App. 1997. For purposes of applying equitable principles to effect remedy of cancellation of mortgage satisfaction based on fraud or mistake,

concept of "negligence" refers to lax conduct on part of one innocent party but for which other innocent party would have been protected from deceit.—*MI Co., Ltd. v. McLean*, 482 S.E.2d 597, 325 S.C. 616, rehearing denied, and certiorari denied.—Mtg 316.

S.D. 2001. "Negligence" is the breach of a duty owed to another, the proximate cause of which results in an injury.—*Zarecky v. Thompson*, 634 N.W.2d 311, 2001 SD 121.—Neglig 202.

S.D. 1996. Failure to anticipate and guard against happening which would not have arisen but for exceptional or unusual circumstances is not "negligence."—*Poelstra v. Basin Elec. Power Co-op.*, 545 N.W.2d 823, 1996 SD 36.—Neglig 213.

S.D. 1986. Under common law, "negligence" is the failure to exercise that care which an ordinarily prudent or reasonable person would exercise under the same or similar circumstances, commensurate with existing and surrounding hazards.—*Lovell v. Oahe Elec. Co-op.*, 382 N.W.2d 396.—Neglig 233.

S.D. 1965. "Negligence" is the failure to exercise that care which reasonably prudent person would have exercised under the given circumstances.—*State v. Muhs*, 137 N.W.2d 237, 81 S.D. 480.—Neglig 233.

S.D. 1964. "Negligence" is failure to exercise ordinary or due care, that is, such care as an ordinarily prudent or reasonable person would use under the same or similar circumstances.—*Loonan Lumber Co. v. Wannamaker*, 131 N.W.2d 78, 81 S.D. 51.—Neglig 231, 232.

S.D. 1962. "Negligence" is breach of legal duty, and it is immaterial whether duty is one imposed by rule of common law requiring exercise of ordinary care or skill not to injure another, or is imposed by statute designed for benefit of class of persons which includes one claiming to have been injured as result of nonperformance of statutory duty.—*Albers v. Ottenbacher*, 116 N.W.2d 529, 79 S.D. 637.—Neglig 232, 259.

S.D. 1956. An affirmatively reckless state of mind or deliberate recklessness, differentiates the "willful and wanton misconduct" contemplated by automobile guest statute from "negligence." SDC 44.0362.—*Chernotik v. Schrank*, 79 N.W.2d 4, 76 S.D. 374.—Autos 181(1).

S.D. 1954. Stopping tractor-trailer on highway at night without placing warning flares, as required by statute, and parking automobile facing the opposite direction with headlights lighted on the other side of highway opposite or near truck constituted "negligence". SDC 44.0354.—*Pleinis v. Wilson Storage & Transfer Co.*, 66 N.W.2d 68, 75 S.D. 397.—Autos 173(5).

S.D. 1953. Driving of motor vehicle at unreasonable or dangerous speed is "negligence". SDC 44.9921; SDC Supp. 44.0303.—*Stone v. Hinsvark*, 57 N.W.2d 669, 74 S.D. 625.—Autos 168(1).

S.D. 1950. Inadvertent failure to perform a noncontractual duty to the logical consequent damage of another constitutes "negligence". SDC

13.0102(d).—Farmers Home Mut. Ins. Co. v. Gustafson & Larson Co., 42 N.W.2d 605, 73 S.D. 313.—Neglig 202.

S.D. 1944. "Willfulness" and "negligence" are opposites, willfulness signifying presence of intention, purpose or design, and negligence their absence, arising from inattention, thoughtlessness, or heedlessness, and there is a distinction between negligence, characterized by inadvertence, and "willful injury" characterized by advertence.—Smith v. Weber, 16 N.W.2d 537, 70 S.D. 232.—Neglig 201, 275.

S.D. 1938. A mere error of judgment as to the result of doing an act or the omission of an act, having no evil purpose or intent or consciousness of probable injury, may constitute "negligence."—Granflaten v. Rohde, 283 N.W. 153, 66 S.D. 335.—Neglig 200.

S.D. 1938. "Negligence" is the failure to exercise ordinary care under the circumstances, "ordinary care" in the abstract being such care under the same or similar circumstances as an ordinarily prudent or reasonable person would exercise, commensurate with existing and surrounding hazards.—Granflaten v. Rohde, 283 N.W. 153, 66 S.D. 335.—Neglig 232.

S.D. 1936. Motorist who, without stopping, started across crossing with which he was familiar, although he was blinded by sun when he looked in direction of approaching train, held "contributorily negligent," and such negligence was not excused by railroad's "negligence" in failing to maintain proper lookout and negligently omitting statutory signals.—Ulrikson v. Chicago, M., St. P. & P. Ry. Co., 268 N.W. 369, 64 S.D. 476.—R R 330(3).

S.D. 1934. Word "recklessly" has been held to connote element of willfulness or deliberate, affirmative intent, to describe type or quantum or degree of "negligence," which is failure to exercise such degree of care as reasonably prudent man would exercise under circumstances, and as denoting state of mind in intermediate zone between negligence and affirmative intention, while "belief" is assent of mind to truth of declaration, proposition, or alleged fact.—State v. Pickus, 257 N.W. 284, 63 S.D. 209.

S.D. 1934. "Negligence" is absolute and consists in the failure to exercise degree of care which ordinarily reasonable man would use under circumstances.—Wittstruck v. Lee, 252 N.W. 874, 62 S.D. 290, 92 A.L.R. 1361.—Neglig 233.

Tenn. 1950. "Negligence" consists in a failure to provide against ordinary occurrences of life, and fact that provision made is insufficient as against an event which might happen once in a lifetime does not make out a case of actionable negligence, but use of the thing must be dangerous according to common experience.—Ashworth v. Carnation Co., 229 S.W.2d 337, 190 Tenn. 274.—Neglig 213.

Tenn. 1939. A duty rests on everyone to use due care under the attendant circumstances, and "negligence" is doing what a reasonable and prudent person would not do under the given circum-

stances.—Dixon v. Lobenstein, 132 S.W.2d 215, 175 Tenn. 105.—Neglig 210, 231.

Tenn. 1938. "Negligence" consists in a failure to provide against the ordinary occurrences of life, and the fact that the provision made is insufficient as against an event such as might happen once in a lifetime, does not make out a case of actionable negligence.—Illinois Cent. R. Co. v. Nichols, 118 S.W.2d 213, 173 Tenn. 602.—Neglig 232.

Tenn. 1924. "Accident" is unexpected occurrence, external to party affected, while "mistake" is internal, a mental condition, conception, or erroneous conviction, influencing will and leading to outward, physical manifestation, ordinarily affirmative, viz., doing of act which would not otherwise have been done, its essential prerequisite being ignorance, which distinguishes it from "fraud," wherein knowledge and intent are actually or theoretically present, and "negligence," in which inattention or absence of thought are inherent.—Jones v. Jones, 266 S.W. 110, 150 Tenn. 554.—Ref of Inst 17(1).

Tenn. 1904. "Negligence" of a railroad company, whereby fire is communicated to adjacent premises, may consist in not being provided with the best appliances to prevent the unnecessary escape of fire from its locomotives, in not keeping such appliances in repair, in not keeping its right of way free from combustible material, in operating its locomotives so as to unnecessarily scatter fire, and in not arresting the spread of fire after it has been set by its engines from its negligence on its right of way.—Louisville & N.R. Co. v. Fort, 80 S.W. 429, 112 Tenn. 432.

Tenn.Ct.App. 1941. Entering upon a grade crossing without exercising due caution and using one's faculty of sight as well as hearing constitutes "negligence," even though no audible warning of train's approach was given.—Cincinnati, N.O. & T.P. Ry. Co. v. Garrett, 154 S.W.2d 435, 25 Tenn. App. 173.—R R 330(3).

Tenn.Ct.App. 1940. Under Federal Employers' Liability Act, it is "negligence" for a railroad to maintain or to allow obstructions so close to its tracks as to endanger its employees while performing their duties in operating trains, but the maintenance of mail cranes, semaphores, switch stands, and overhead bridges so near the track as to endanger employees while performing their duties is not "negligence" but a risk incident to service which employees assume. Federal Employers' Liability Act § 1 et seq., 45 U.S.C.A. § 51 et seq.—Tennessee Cent. Ry. Co. v. Shacklett, 147 S.W.2d 1054, 24 Tenn.App. 563.—Emp Liab 49.

Tenn.Ct.App. 1940. A physician or surgeon is not liable for failure to cure, but only for "negligence," a breach of his duty to patient to use that degree of skill and learning which is ordinarily used under similar circumstances by members in good standing in his profession.—Merryman v. Bunch, 145 S.W.2d 559, 24 Tenn.App. 408.—Health 619, 625, 665.

Tenn.Ct.App. 1938. "Negligence" is a lack of ordinary care; "ordinary care" being that degree of

care which a person of reasonable prudence would exercise under a given state of facts appearing in the evidence in a cause or in a state of facts similar thereto.—*Long v. Tomlin*, 125 S.W.2d 171, 22 Tenn.App. 607.—Neglig 232.

Tenn.Ct.App. 1938. "Negligence" is lack of "ordinary care," which has been defined as that degree of care which person of reasonable prudence would exercise under given state of facts appearing in evidence or similar state of facts.—*Patillo v. Gambill*, 124 S.W.2d 272, 22 Tenn.App. 485.—Neglig 232.

Tenn.Ct.App. 1935. Federal Employers' Liability and Safety Appliance Acts, both enacted to promote safety of railroad employees engaged in interstate commerce, are in pari materia and must be construed together, and any violation of Safety Appliance Act constitutes "negligence" within meaning of Federal Employers' Liability Act. Federal Employers' Liability Act, 45 USCA § 51 et seq.; Safety Appliance Acts, 45 USCA § 1 et seq.—*Southern Ry. Co. v. Woods*, 86 S.W.2d 903, 19 Tenn.App. 314.—Statut 223.2(19).

Tex. 1957. "Negligence" is the doing of that which a person of ordinary prudence would not have done under the same or similar circumstances, or the failure to do that which a person of ordinary prudence would have done under the same or similar circumstances.—*Thompson v. Gibson*, 298 S.W.2d 97, 156 Tex. 593, certiorari granted, reversed 78 S.Ct. 2, 355 U.S. 18, 2 L.Ed.2d 1, rehearing denied 78 S.Ct. 258, 355 U.S. 900, 2 L.Ed.2d 197, on remand 310 S.W.2d 564, 158 Tex. 231.—Neglig 232.

Tex. 1945. A guest seeking to hold hotel keeper liable for loss of personalty in amount exceeding \$50 must show that hotel keeper was guilty of ordinary "negligence", which is failure to exercise ordinary care, but guest's contributory negligence is a complete defense. *Vernon's Ann.Civ.St.* art. 4592.—*Southwestern Hotel Co. v. Rogers*, 184 S.W.2d 835, 143 Tex. 343.—Inn 11(10), 11(12).

Tex. 1943. "Negligence" means the doing of that which a person of ordinary prudence would not have done under the same or similar circumstances, or the failure to do that which a person of ordinary prudence would have done under the same or similar circumstances.—*Great Atlantic & Pacific Tea Co. v. Evans*, 175 S.W.2d 249, 142 Tex. 1.—Neglig 232.

Tex. 1943. The standard to test the question of "negligence" vel non is the common experience of mankind and implies generally the use of that care and diligence which ordinarily prudent men would use to prevent injury under the circumstances of the particular case.—*Great Atlantic & Pacific Tea Co. v. Evans*, 175 S.W.2d 249, 142 Tex. 1.—Neglig 232.

Tex. 1943. "Negligence" rests primarily on reason to anticipate injury and failure to perform the duty arising on account of such anticipation.—*Great Atlantic & Pacific Tea Co. v. Evans*, 175 S.W.2d 249, 142 Tex. 1.—Neglig 213.

Tex. 1943. Requiring stock boy and assistant manager of chain store to carry sacks of potatoes weighing 100 pounds 75 or 80 feet without assistance was not actionable "negligence" rendering company liable for hernia resulting from such work, where employee was a strong young man accustomed to doing such work for chain store and other previous employers and employees in other grocery stores customarily did the same character of work.—*Great Atlantic & Pacific Tea Co. v. Evans*, 175 S.W.2d 249, 142 Tex. 1.—Emp Liab 102.

Tex. 1942. "Negligence" is doing of something that person of ordinary prudence would not have done under same or similar circumstances or failure to do something that such person would have done under such circumstances.—*Buchanan v. Rose*, 159 S.W.2d 109, 138 Tex. 390.—Neglig 232.

Tex. 1941. Both "negligence" and "contributory negligence" refer to a failure to exercise ordinary care, but the terms differ in that negligence has reference to conduct which creates an undue risk of harm or injury to others, while contributory negligence has no reference to others, but refers to conduct which involves an undue risk of harm to the person who sustains it.—*Walgreen-Texas Co. v. Shivers*, 154 S.W.2d 625, 137 Tex. 493.—Neglig 232, 502(2).

Tex. 1910. "Negligence" is the doing of something which one of ordinary prudence would not have done, or the omission of something which such person would have done, under like circumstances.—*Houston & T.C.R. Co. v. Alexander*, 132 S.W. 119, 103 Tex. 594.

Tex. 1910. An instruction that "negligence," as used in the charge, meant the failure to do that which a person of ordinary prudence would have done under the same or similar circumstances, or the doing of that which such a person would not have done under such circumstances, that "ordinary care," as used in the charge, meant that degree of care which a person of ordinary prudence would exercise under the same or similar circumstances, properly stated the jury's duty to look to the facts and circumstances as they existed at the time the act was done as the standard by which the act was to be judged.—*Houston & T.C.R. Co. v. Johnson*, 127 S.W. 539, 103 Tex. 320.—Neglig 232.

Tex. 1906. "Negligence" is a failure to do that which a man of ordinary care would do under the same or similar circumstances, or doing that which such a man would not do under such circumstances.—*Missouri, K. & T. Ry. Co. v. Parrott*, 92 S.W. 795, 100 Tex. 9.

Tex. 1905. The first element of "negligence" is a duty. If there is no duty, there can be no negligence. If the defendant owed a duty, but did not owe it to the plaintiff, the action will not lie.—*Texas Cent. R. Co. v. Harbison*, 85 S.W. 1138, 98 Tex. 490.

Tex. 1892. "Carelessness" and "negligence," as used in Rev.St. art. 2899, *Vernon's Ann.Civ.St.* art. 4671, making the proprietor or owner of a railroad liable for injuries arising from the "carelessness or

negligence" of his servants, are synonymous, since negligence is but the omission of care, and carelessness is etymologically the same thing.—*Turner v. Cross*, 18 S.W. 578, 83 Tex. 218, 15 L.R.A. 262.

Tex.Com.App. 1941. "Negligence" implies ability to perceive and power of volition, but mere drunkenness does not excuse negligence and is not regarded as destructive of element of understanding or perception, but enters into the tort, and does not disprove negligence, but is a fact admissible in evidence as tending to prove negligence.—*Scott v. Gardner*, 156 S.W.2d 513, 137 Tex. 628, 141 A.L.R. 50.—Neglig 239, 1634.

Tex.Com.App. 1939. The intrusting of an automobile to a minor child known to be a reckless and incompetent driver constitutes an act of "negligence" for which the owner is liable.—*Seinsheimer v. Burkhart*, 122 S.W.2d 1063, 132 Tex. 336.—Autos 192(11).

Tex.Com.App. 1934. "Unavoidable accident" can occur only in absence of "negligence," which usually consists in involuntary and casual, that is, accidental, doing or omission to do something which results in injury.—*Beaumont, S.L. & W. Ry. Co. v. Schmidt*, 72 S.W.2d 899, 123 Tex. 580.—Neglig 440(1).

Tex.Com.App. 1933. "Negligence" is doing of something that person of ordinary prudence would not have done under similar circumstances, or failure to do something that such person would have done under same or similar circumstances.—*City of Waco v. Diamond*, 65 S.W.2d 272.—Neglig 232.

Tex.Com.App. 1927. "Negligence" involves duty, failure of performance, and resulting injury.—*Koons v. Rook*, 295 S.W. 592.—Neglig 202.

Tex.Com.App. 1926. Duty and nonperformance thereof is essential to "negligence."—*T.J. Mansfield Const. Co. v. Gorsline*, 288 S.W. 1067, rehearing denied 292 S.W. 187.—Neglig 210.

Tex.Com.App. 1923. "Negligence" may consist either in a wrongful act or a wrongful omission; the omission to do something or the doing of something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do or omit to do under like circumstances.—*Lancaster v. Carter*, 255 S.W. 392.

Tex.Crim.App. 1949. "Negligence" within meaning of statute defining aggravated assault with a motor vehicle is the same negligence as that defined under the law of negligent homicide. *Vernon's Ann.P.C. arts. 1149, 1231, 1238.*—*Merryman v. State*, 223 S.W.2d 630, 153 Tex.Crim. 593.—Autos 347.

Tex.Crim.App. 1940. The statute providing that want of proper care and caution distinguishes negligent homicide from excusable homicide, constitutes a definition of "negligence" applicable to prosecutions for aggravated assault with an automobile. *Vernon's Ann.P.C. arts. 1149, 1233.*—*Guajardo v. State*, 139 S.W.2d 85, 139 Tex.Crim. 201.—Autos 347.

Tex.Crim.App. 1932. "Negligence" is failure to do what man of ordinary care and prudence would do under same or like circumstances.—*Young v. State*, 47 S.W.2d 320, 120 Tex.Crim. 39.—Neglig 232.

Tex.App.—Houston [1 Dist.] 2000. With no objection, trial court correctly defined "negligence" for jury, as to contractor and subcontractor, as failure to use ordinary care to reduce or eliminate unreasonable risk of harm created by premises condition that contractor or subcontractor knows about or in exercise of ordinary care should know about.—*Purcell Const., Inc. v. Welch*, 17 S.W.3d 398.—Neglig 1205(7), 1205(9).

Tex.App.—Houston [1 Dist.] 1994. "Negligence" is conduct that falls below standard established by law for protection of others against unreasonable risk of harm. *Restatement (Second) of Torts § 282.*—*Dunnings v. Castro*, 881 S.W.2d 559, writ denied.—Neglig 233.

Tex.App.—Fort Worth 1996. "Negligence" is failure to do that which person of ordinary prudence would have done under same or similar circumstances, or doing that which person of ordinary prudence would not have done under same or similar circumstances.—*Waite Hill Services, Inc. v. World Class Metal Works, Inc.*, 935 S.W.2d 197, rehearing overruled, writ granted, reversed 959 S.W.2d 182.—Neglig 232.

Tex.App.—Fort Worth 1996. "Negligence" claim requires proof of the following elements: (1) existence of legal duty; (2) breach of that duty; and (3) damages proximately resulting from that breach.—*Kehler v. Eudaly*, 933 S.W.2d 321, rehearing overruled, and writ denied.—Neglig 202.

Tex.App.—Fort Worth 1993. Cause of action under Deceptive Trade Practices Act (DTPA) exists against health care providers for personal injuries when that claim is based on knowing misrepresentation; knowing misrepresentations are not "negligence" for purposes of provision of Medical Liability Act precluding DTPA cause of action against physicians for personal injuries based on negligence. *V.T.C.A., Bus. & C. §§ 17.41–17.63; Vernon's Ann.Texas Civ.St. art. 4590i, § 12.01(a).*—*Rhodes v. Sorokolit*, 846 S.W.2d 618, rehearing overruled, and writ granted, affirmed 889 S.W.2d 239.—Cons Prot 6.

Tex.App.—Austin 1985. "Negligence" is doing of that which person of ordinary prudence would not have done, or omission to do what hypothetical person would have done, in same or similar circumstances.—*Zidell v. Bird*, 692 S.W.2d 550.—Neglig 232.

Tex.App.—San Antonio 1989. "Negligence" (breach of duty) is failure to do that which person of ordinary prudence would have done under the same or similar circumstances or doing that which person of ordinary prudence would not have done under the same or similar circumstances; duty is threshold inquiry in establishing negligence, and plaintiff must allege and prove existence and violation of duty owed to him by defendant to establish

liability in tort.—*Peek v. Oshman's Sporting Goods, Inc.*, 768 S.W.2d 841, writ denied.—*Neglig* 232, 1537.

Tex.App.—San Antonio 1983. “Negligence” is failure to do that which person of ordinary prudence would have done under same or similar circumstances, or doing that which person of ordinary prudence would not have done under same or similar circumstances.—*Vargas v. City of San Antonio*, 650 S.W.2d 177, dismissed.—*Neglig* 232.

Tex.App.—Dallas 1999. “Negligence” means doing that which a person of ordinary prudence would not have done or not doing that which a person of ordinary prudence would have done under the same or similar circumstances; the common experience of mankind is the standard, and it implies generally the want of care and diligence that ordinary, prudent persons would use to prevent injury under the circumstances of the particular case.—*Sibai v. Wal-Mart, Stores, Inc.*, 986 S.W.2d 702, rehearing overruled.—*Neglig* 232.

Tex.Civ.App.—Hous. [1 Dist.] 1976. An intentional act may constitute “negligence” on the part of the actor.—*Dartez v. Gadbois*, 541 S.W.2d 502.—*Neglig* 201.

Tex.Civ.App.—Fort Worth 1954. “Negligence” consists in doing what an ordinarily prudent person would not do under same or similar circumstances or failing to do what an ordinarily prudent person would do under same similar circumstances.—*Durham v. Fort Worth Tent & Awning Co.*, 271 S.W.2d 181, dismissed.—*Neglig* 232.

Tex.Civ.App.—Fort Worth 1943. “Negligence” is doing of something that person of ordinary prudence would not have done under same or similar circumstances or failure to do something that such person would have done under such circumstances.—*Texas & N. O. R. Co. v. Blake*, 175 S.W.2d 683, writ refused.—*Neglig* 232.

Tex.Civ.App.—Fort Worth 1943. “Negligence” is a failure to observe a legal duty, and the elements or factors involved are duty, nonperformance thereof, and injury.—*Hays v. The Texan, Inc.*, 174 S.W.2d 1006.—*Neglig* 202.

Tex.Civ.App.—Fort Worth 1942. Where action against gas company for injuries sustained by plaintiff as result of gas explosion was based solely upon company's alleged failure to odorize its gas as provided by Railroad Commission's rule and it was determined that Commission's rule was void, company's failure to comply therewith was not “negligence” authorizing plaintiff to recover for her injuries.—*Lone Star Gas Co. v. Kelly*, 166 S.W.2d 191.—*Gas* 18.

Tex.Civ.App.—Fort Worth 1942. “Negligence” is a failure to observe a legal duty, and to constitute negligence there must be some violation of duty and the duty required is that of the wrongdoer to the very person claiming on the ground of negligence.—*Lone Star Gas Co. v. Kelly*, 166 S.W.2d 191.—*Neglig* 250.

Tex.Civ.App.—Fort Worth 1942. The elements involved in “negligence” are duty, nonperformance thereof, and injury.—*Lone Star Gas Co. v. Kelly*, 166 S.W.2d 191.—*Neglig* 202.

Tex.Civ.App.—Fort Worth 1939. “Negligence” is a failure to observe a legal duty, and when no duty exists no liability can arise on account of negligence.—*Texas Elec. Service Co. v. Hawthorne*, 135 S.W.2d 531, writ dismissed, correct.—*Neglig* 210.

Tex.Civ.App.—Fort Worth 1937. In action by automobile guests, who were husband and wife, against automobile owner for injuries received while husband was driving, if cause were submitted on issues to establish husband's negligence as sole cause of accident, definitions of “ordinary care,” “negligence,” and “proximate cause” would have been proper, notwithstanding “guest statute,” though charge covered contributory negligence instead of “sole cause” of accident. *Vernon's Ann. Civ.St. art. 6701b*.—*Scott v. Gardner*, 106 S.W.2d 1109, writ dismissed.—*Autos* 246(2.1), 246(22).

Tex.Civ.App.—Fort Worth 1937. In action governed by “guest statute,” instruction defining “heedlessness or reckless disregard of the rights of others” as doing or failure to do thing by person who is indifferent, oblivious, and careless to consequences, and without consideration for others, and that it was unnecessary that act be done with willful purpose of inflicting injury, but that it must be in connection with doing of act or omission to act under circumstances indicating natural or probable result and consequence thereof, was misleading and confusing, especially where court also defined “ordinary care” and “negligence”. *Vernon's Ann.Civ. St. art. 6701b*.—*Scott v. Gardner*, 106 S.W.2d 1109, writ dismissed.—*Autos* 246(2.1).

Tex.Civ.App.—Fort Worth 1934. Railroad spotting cars on cement company's siding was required to set only such brakes as would keep cars from moving down grade and failure to set brakes on all cars was not “negligence” so as to render railroad liable to cement company employee for injuries due to collision of cars, where it was not customary for railroad to set brakes on every car.—*Patterson v. Gulf, C. & S.F. Ry. Co.*, 77 S.W.2d 1073, writ dismissed.—*R R* 275(1).

Tex.Civ.App.—Fort Worth 1922. A definition of “negligence” as a “failure to exercise ordinary care; it is the doing of that which an ordinarily prudent person would not do in the same or similar circumstances; or it is the failure to do that which an ordinarily prudent person would do in the same or similar circumstances,” was correct, and not objectionable for use of “prudence” instead of “care.”—*Wichita Valley Ry. Co. v. Meyers*, 248 S.W. 444.—*Neglig* 232.

Tex.Civ.App.—Austin 1963. “Negligence” pertains to conduct which is gauged by what person charged knew or by exercise of ordinary care should have known.—*Byrd v. Trevino-Bermea*, 366 S.W.2d 632.—*Neglig* 212.

Tex.Civ.App.—Austin 1960. In action by fourteen-year-old boy against corporation for injuries

sustained in explosion of dynamite cap found at corporation's rock quarry, instruction that corporation and its employees entrusted with care and control of dynamite caps were under duty to exercise such high degree of foresight as to possible dangers, and such high degree of prudence in guarding against them, as would be used by a very cautious, prudent, and competent person under same or similar circumstances, and that "negligence", as applied to corporation, meant a failure, if any, to exercise such high degree of care, was correct.—*Dezendorf Marble Co. v. Gartman*, 333 S.W.2d 404, writ granted, affirmed 343 S.W.2d 441, 161 Tex. 535.—*Explos 8*.

Tex.Civ.App.—Austin 1950. "Negligence" depends on acts or omissions of person and must be determined from doing of some act or failure to do some act a reasonably prudent person would or would not have done under the same or similar circumstances.—*Wilson v. Benoit*, 231 S.W.2d 916, reversed 239 S.W.2d 792, 150 Tex. 273.—*Neglig 233*.

Tex.Civ.App.—Austin 1937. Actionable "negligence" consists in the breach of some duty of commission or omission owing by party charged to one injured as a result of such act or omission.—*Gulf, C. & S. F. Ry. Co. v. Bell*, 101 S.W.2d 363, writ dismissed.—*Neglig 210*.

Tex.Civ.App.—Austin 1933. In action for passenger's injuries, definition of "negligence" and "ordinary care," as applied to carrier's duty in transportation of passenger, held required (*Vernon's Ann. Civ. St. art. 2189*).—*Gulf, C. & S.F. Ry. Co. v. Hitt*, 60 S.W.2d 864.—*Carr 321(1)*.

Tex.Civ.App.—Austin 1933. In action for railroad passenger's injuries, defining "negligence," "ordinary care," "proximate cause," and "contributory negligence" held sufficient (*Vernon's Ann. Civ. St. art. 2189*).—*Gulf, C. & S.F. Ry. Co. v. Hitt*, 60 S.W.2d 864.—*Carr 321(1)*.

Tex.Civ.App.—Austin 1933. "Negligence" is failure to exercise ordinary care in performance of, or failure to perform, some duty imposed.—*Gulf, C. & S.F. Ry. Co. v. Hitt*, 60 S.W.2d 864.—*Neglig 232, 250*.

Tex.Civ.App.—Austin 1932. Petition alleging oil company negligently left materials along creek which flood washed down, damaging oil pick-up station, held sufficient against special exception as not showing how such acts constituted negligence. Such petition was sufficient as against special exception that it did not allege expressly how oil company had breached any duty it owed the lower riparian owner because the petition described the act of leaving logs and material on the banks of the stream, so that they were washed down by flood waters, with reasonable degree of particularity, and alleged that such acts were negligent, and because allegation that oil company carelessly and negligently left logs and materials on banks of stream would negative any claim that company was exercising reasonable care in manner of placing materials and floating them downstream; the word "negligence" or "negligently," when used to characterize

act, expressing a fact, and not being a mere epithet or conclusion.—*Magnolia Petroleum Co. v. Dodd*, 52 S.W.2d 670, writ granted, set aside 81 S.W.2d 653, 125 Tex. 125.

Tex.Civ.App.—San Antonio 1972. The term "negligence" means the doing of that which a person of ordinary prudence would not have done under same or similar circumstances, or the failure to do that which a person of ordinary prudence would have done under same or similar circumstances.—*Burgamy v. Lawrence*, 480 S.W.2d 38.—*Neglig 232*.

Tex.Civ.App.—San Antonio 1965. "Negligence", for purpose of medical malpractice suit against general practitioner, is failure to use that degree of care which medical doctors of ordinary knowledge and skill, engaged in general practice of medicine in same general vicinity, would use in diagnosis and treatment of patients under same or similar circumstances.—*Levermann v. Cartall*, 393 S.W.2d 931, ref. n.r.e.—*Health 620, 637*.

Tex.Civ.App.—San Antonio 1928. When means of knowledge are open and palpable, failure to use is "negligence."—*Boltinghouse v. Thompson*, 12 S.W.2d 253.—*Neglig 506(6)*.

Tex.Civ.App.—Dallas 1972. "Negligence" is the failure to use ordinary care; i. e., the failure to do that which a person of ordinary prudence would have done under the same or similar circumstances or the doing of that which a person of ordinary prudence would not have done under the same or similar circumstances.—*Air Control Engineering, Inc. v. Hogan*, 477 S.W.2d 941.—*Neglig 232*.

Tex.Civ.App.—Dallas 1942. Employer is charged with the duty of using reasonable care in furnishing his employees with tools, implements and appliances reasonably safe for the use for which they were intended, and failure to discharge such duty would constitute actionable "negligence", should an employee be injured as the proximate result thereof.—*Stallings v. Whisenant*, 159 S.W.2d 559.—*Emp Liab 34*.

Tex.Civ.App.—Dallas 1939. Where person made a party to an action owed plaintiff nothing, was not served with process, and authorized no one to appear for him, but judgment was rendered against him, such person in signing affidavit at request of another owed no duty to judgment creditor to carefully examine affidavit presented to him, and his failure to do so was not "negligence" which charged him with knowledge of facts, as respects the running of the statute of limitations against suit to vacate such judgment.—*Freeman v. B. F. Goodrich Rubber Co.*, 127 S.W.2d 476, writ dismissed by agreement.—*Lim of Act 95(2)*.

Tex.Civ.App.—Dallas 1939. "Negligence" results as a corollary from unperformed duty and is composed of three elements: Duty to protect another from injury; failure to perform the duty; and an injury resulting to the one to whom the duty was owing.—*Freeman v. B. F. Goodrich Rubber Co.*, 127 S.W.2d 476, writ dismissed by agreement.—*Neglig 202*.

Tex.Civ.App.—Dallas 1936. Person operating automobile on highway is charged with duty of exercising ordinary care for safety of others who may be using highway, and his failure to observe such care is “negligence.”—*Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354, writ dismissed.—Autos 146.

Tex.Civ.App.—Dallas 1936. Person operating automobile on highway is charged with duty of exercising ordinary care for his own safety, and his failure to observe such care is “negligence.”—*Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354, writ dismissed.—Autos 204.

Tex.Civ.App.—Dallas 1936. Person operating automobile on highway is charged with duty of exercising ordinary care for his own safety and safety of others who may be using highway, and his failure to observe such care is “negligence,” and if injury is proximate result of negligence, injured party may recover in event he did not contribute to cause injury by failure to perform duty resting on him to observe ordinary care for his own safety.—*Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354, writ dismissed.—Autos 226(2).

Tex.Civ.App.—Dallas 1934. “Negligence” is failure of duty, or omission to do something which reasonably prudent person would have done.—*St. Louis, S.F. & T. Ry. Co. v. Gore*, 69 S.W.2d 186, writ dismissed.—Neglig 233.

Tex.Civ.App.—Dallas 1933. Hotel keeper is liable for loss of guest’s property only if guilty of “negligence” consisting in omission to exercise care which ordinarily prudent person would use.—*Dallas Hotel Co. v. Raitman*, 59 S.W.2d 943.—Inn 11(3).

Tex.Civ.App.—Dallas 1931. “Negligence” is not act itself, but fact which defines character of act and makes it legal wrong.—*Metzger v. Gambill*, 37 S.W.2d 1077, writ refused.—Neglig 200.

Tex.Civ.App.—Dallas 1929. Instruction defining “negligence” as failure to act as ordinarily prudent person would have acted under similar circumstances held proper in action against power company for death.—*Texas Power & Light Co. v. Culwell*, 19 S.W.2d 816, writ granted, reversed 34 S.W.2d 820, modified 37 S.W.2d 123.—Electricity 19(13).

Tex.Civ.App.—Dallas 1925. “Negligence” is a failure to observe a legal duty, and when no duty exists, no legal liability can arise on account of negligence.—*Lancaster v. Hall*, 277 S.W. 776, writ dismissed w.o.j.

Tex.Civ.App.—Dallas 1917. “Negligence” includes both acts of commission and omission. It is the doing of that which a reasonably prudent person would not do under the circumstances of the situation, or the failure to do that which a reasonably prudent person would have done under the circumstances.—*Walling v. Houston & T.C.R. Co.*, 195 S.W. 232, writ refused.—Neglig 233.

Tex.Civ.App.—Texarkana 1961. “Negligence” is failure to observe a legal duty, and in absence of such duty no legal liability can arise through such negligence.—*McKinney v. Chambers*, 347 S.W.2d 30.—Neglig 210.

Tex.Civ.App.—Amarillo 1951. “Negligence,” involves a failure of duty and consists of acts or omissions, and if a duty is breached by an act of negligence which is active or affirmative in character, a trespass may exist.—*Gaford v. Arnold*, 238 S.W.2d 225.—Neglig 250; Tresp 1.

Tex.Civ.App.—Amarillo 1947. “Negligence” involves a failure of duty and consists of acts or omissions.—*Eubanks v. Hopkins*, 203 S.W.2d 277.—Neglig 250.

Tex.Civ.App.—Amarillo 1942. “Negligence” is the doing of an act which a person of ordinary prudence would not do under similar circumstances, or the failure to do that which a man of ordinary prudence and care would have done under similar circumstances.—*Lusk v. Onstott*, 161 S.W.2d 819.

Tex.Civ.App.—Amarillo 1941. Evidence that 14-year-old son, who had been in possession of driver’s license from state highway department for nine months, had been detained by police for speeding, or that son had been charged and found guilty of violating traffic regulation, and that father had knowledge thereof, was insufficient to show that son was an “incompetent”, “reckless”, or “careless” driver within rule that father intrusting automobile to minor child known to be a reckless and incompetent driver constitutes an act of “negligence” for which father is liable.—*Mayer v. Johnson*, 148 S.W.2d 454, writ dismissed, correct.—Autos 244(30).

Tex.Civ.App.—Amarillo 1941. The intrusting of an automobile to a minor child known to be a reckless and incompetent driver constitutes an act of “negligence” for which the owner is liable.—*Mayer v. Johnson*, 148 S.W.2d 454, writ dismissed, correct.—Autos 192(11).

Tex.Civ.App.—Amarillo 1940. “Negligence” can only be predicated upon knowledge, actual, or constructive, and ignorance of facts exonerates from liability unless such ignorance is “culpable ignorance” which is that which results from a failure to exercise ordinary care to acquire knowledge, and knowledge which could be acquired by the exercise of ordinary care is by law imputed to the person and he is held to have “constructive knowledge.”—*Luck v. Buffalo Lakes*, 144 S.W.2d 672, writ dismissed, correct.—Neglig 251.

Tex.Civ.App.—Amarillo 1939. An “unavoidable accident” is entirely different from questions of “negligence” and “proximate cause,” which involve liability of the actors for the consequences of their conduct, while principal element involved in term “unavoidable accident” is fate which is the result of the intervention of fatalistic elements and is one for which fate alone is responsible, and, if an event has been brought about by the negligence of one of the actors or all of them, it cannot, in a legal sense, be an “unavoidable accident.”—*Hicks v. Brown*, 128 S.W.2d 884, modified 151 S.W.2d 790, 136 Tex. 399.—Neglig 440(1).

Tex.Civ.App.—Amarillo 1939. If court gives jury definition of “negligence” which means the doing

of that which a person of ordinary prudence and care would not do under similar circumstances or the failure to do that which a person of ordinary care would do under similar circumstances, it is improper again to give the same definition in its relation to the term "proper lookout" which means the failure to keep such a lookout as a person of ordinary care would have kept under the same or similar circumstances.—*Hicks v. Brown*, 128 S.W.2d 884, modified 151 S.W.2d 790, 136 Tex. 399.—Trial 352.21.

Tex.Civ.App.—Amarillo 1927. If reasonably prudent person approaching railroad crossing would stop, look, and listen, failure to do so is "negligence."—*Quanah, A. & P. Ry. Co. v. Hogland*, 297 S.W. 761.—R R 327(1).

Tex.Civ.App.—El Paso 1970. "Negligence" is usually defined as doing of something that a person of ordinary prudence would not have done under similar circumstances or failure to do something that person of ordinary prudence would have done under the same or similar circumstances; and it is simply a failure to observe a legal duty.—*Texas & P. Ry. Co. v. Salazar*, 458 S.W.2d 116, ref. n.r.e.—Neglig 232, 250.

Tex.Civ.App.—El Paso 1946. Where plaintiff is placed in situation of peril or apparent peril by negligence of defendant, and under stress or compulsion of fear or panic reasonably engendered by such negligence so acts that he suffers injury, such action does not constitute "negligence."—*Hicks v. Frost*, 195 S.W.2d 606, ref. n.r.e.—Neglig 510(1).

Tex.Civ.App.—El Paso 1946. Action or nonaction does not have the quality of "negligence" unless there is ability to appreciate harmful tendency thereof as to another.—*Texas & P. Ry. Co. v. Mix*, 193 S.W.2d 542.—Neglig 213.

Tex.Civ.App.—El Paso 1946. To have quality of "negligence", human action or nonaction need not be in light of absolute knowledge that another will be injured thereby.—*Texas & P. Ry. Co. v. Mix*, 193 S.W.2d 542.—Neglig 213.

Tex.Civ.App.—El Paso 1943. "Negligence" is the performance or omission of some act in violation of legal duty.—*Humble Oil & Refining Co. v. Bell*, 180 S.W.2d 970, writ refused 181 S.W.2d 569, 142 Tex. 645.—Neglig 250.

Tex.Civ.App.—El Paso 1943. "Negligence" deals with quality of act or omission in question, while "proximate cause" deals with consequences thereof.—*Texas & N. O. R. Co. v. Sturgeon*, 177 S.W.2d 340, reversed 177 S.W.2d 264, 142 Tex. 222.—Neglig 200, 370.

Tex.Civ.App.—El Paso 1941. In personal injury action, trial court's definition of term "negligence" as meaning failure to exercise ordinary care, and defining "ordinary care" as that degree of care which a person of ordinary prudence would exercise under same or similar circumstances was proper, where trial court did not undertake to set its definition up as an exclusive one or to condemn other recognized and accepted definitions.—*Herndon v.*

Halliburton Oil Well Cementing Co., 154 S.W.2d 163, writ refused w.o.m.—Neglig 1720.

Tex.Civ.App.—El Paso 1941. In action for injuries suffered in collision between automobile and truck, one submission in charge of issue involving speed of truck is sufficient, since speed above statutory limit is "negligence" and there is only question of proximate cause, and, if speed was within statutory limits, question arises whether it was negligence.—*William Cameron Co. v. Downing*, 147 S.W.2d 963.—Trial 352.18.

Tex.Civ.App.—El Paso 1940. An act or failure to act has the quality of "negligence" only when injury may be anticipated therefrom.—*Pound v. Popular Dry Goods Co.*, 139 S.W.2d 341.—Neglig 213.

Tex.Civ.App.—El Paso 1915. "Negligence" is a failure to do what a reasonably prudent person would ordinarily have done under the same or similar circumstances, or the doing of what a reasonably prudent person under the same or similar circumstances would not have done.—*Consolidated Kansas City Smelting & Refining Co. v. Schulte*, 176 S.W. 94, writ refused.

Tex.Civ.App.—Beaumont 1972. When parties use term "negligence" in contract with no qualification, it is to be assumed they mean all shades of negligence and do not intend to differentiate between active and passive negligence.—*Orange Rice Mill. Co. v. Southern Pac. Co.*, 479 S.W.2d 725, ref. n.r.e.—Contracts 159.

Tex.Civ.App.—Beaumont 1958. Actionable "negligence" includes the element of proximate cause.—*Mabry v. Lee*, 319 S.W.2d 125, writ refused.—Neglig 372.

Tex.Civ.App.—Beaumont 1934. In action for exemplary damages for death of employee, court held to have properly defined "ordinary negligence" where it defined its elements "ordinary care" as that degree of care that ordinarily prudent person would use and "negligence" as being failure to use ordinary care.—*Pure Oil Co. v. Pope*, 75 S.W.2d 175, reversed.—Death 60.

Tex.Civ.App.—Beaumont 1930. In action for injuries sustained in automobile collision, court's definition of "negligence" and "ordinary care" held proper.—*Stedman Fruit Co. v. Smith*, 28 S.W.2d 622, writ dismissed w.o.j.—Autos 246(2.1).

Tex.Civ.App.—Waco 1959. The term "negligence" as applied to a minor plaintiff means the doing of that which an ordinarily prudent person of the age, intelligence, experience and capacity of the minor would not do or the failure to do that which an ordinarily prudent person of the age, intelligence, experience and capacity of the minor would do under similar circumstances. Rules of Civil Procedure, rule 434.—*Coates v. Moore*, 325 S.W.2d 401, ref. n.r.e.—Neglig 535(6).

Tex.Civ.App.—Waco 1954. "Negligence" is a failure to observe a legal duty, and when no duty exists, no legal liability can arise on account of negligence.—*Westbrook v. Watts*, 268 S.W.2d 694, ref. n.r.e.—Neglig 210.

Tex.Civ.App.—Waco 1950. “Negligence” means the breach of a legal duty amounting only to a want of ordinary care, whereas “heedlessness” and “reckless disregard” of the rights of others, within automobile guest statute, is practically the same as “gross negligence”, which is such wanton, heedless and reckless misconduct on the part of wrongdoer as to indicate a conscious indifference to consequences. Vernon’s Ann.Civ.St. art. 6701b.—Gough v. Fincher, 228 S.W.2d 541.—Autos 181(1).

Tex.Civ.App.—Waco 1941. Anticipation of consequences is a necessary element in determining actionable “negligence”.—Texas Co. v. Freer, 151 S.W.2d 907, writ dismissed, correct.—Neglig 213.

Tex.Civ.App.—Waco 1933. In action for injuries to 6 year old girl struck by truck, instruction as to what would constitute “negligence” on part of girl held proper.—Dr. Pepper Bottling Co. v. Rainboldt, 66 S.W.2d 496, writ granted.—Autos 246(35).

Tex.Civ.App.—Waco 1932. Term “negligence,” in colloquial sense, means mere absence of care, and “negligence,” in legal sense, means actionable negligence.—Dallas Ry. & Terminal Co. v. Travis, 46 S.W.2d 743, writ granted, affirmed 78 S.W.2d 941, 125 Tex. 11.—Neglig 200.

Tex.Civ.App.—Waco 1930. Violation of statute requiring doing of act or prohibiting doing thereof constitutes “negligence” as matter of law.—Estes v. Davis, 28 S.W.2d 565, writ granted, affirmed 44 S.W.2d 952.—Neglig 259.

Tex.Civ.App.—Eastland 1941. In action for personal injuries sustained when truck driven by plaintiff collided with defendant’s street car, plaintiff’s trial amendment was insufficient to allege an additional ground of recovery based on doctrine of discovered peril, where essential elements of the doctrine that peril must be discovered in time, by use of all means at hand, to avoid injury, and that failure to make such discovery is “negligence”, that is, a failure to exercise ordinary care, and that such negligence is a proximate cause of injury, were not alleged or implied in allegations of trial amendment.—Dallas Railway & Terminal Co. v. Bishop, 153 S.W.2d 298.—Urb R R 30.

Tex.Civ.App.—Eastland 1938. “Negligence,” in one sense, is a quality, attaching to acts dependent upon, and arising out of, the duties and relations of the parties concerned, and is as much a fact to be found by the jury, as the alleged acts to which it attaches, by virtue of such duties.—Michels v. Boruta, 122 S.W.2d 216.—Neglig 200, 1693.

Tex.Civ.App.—Eastland 1938. The terms “negligence” and “willfulness” are incompatible, and signify the opposites of each other in that absence of intent is a distinguishing characteristic of negligence, whereas willfulness cannot exist without purpose of design.—Michels v. Boruta, 122 S.W.2d 216.—Neglig 201, 275.

Tex.Civ.App.—Eastland 1938. Since the words “negligence” and “willfulness” are incompatible, and a cause of action sounding in ordinary negligence is one thing and one sounding in willful misconduct is another, plaintiff, in a single count,

must proceed on one theory or the other, and cannot, in the absence of permissive statute, allege in such count both simple negligence and willful misconduct, so that, where a single count joins such allegations, it is proper to attack the pleading by demurrer.—Michels v. Boruta, 122 S.W.2d 216.—Plead 64(2), 193(6).

Tex.Civ.App.—Eastland 1938. “Negligence” cases are those which involve liability for injury to personal property, the injury not having been the consequence of conduct which was premeditated or accompanied by the intention or volition of the actor, whereas, if the injury or damage was shown to have been the intended result of the wrongdoer’s act, the legal situation is described in terminology of the common law by the words “assault,” “defamation,” “nuisance,” and “trespass.”—Michels v. Crouch, 122 S.W.2d 211.—Assault 3; Libel 2; Neglig 201; Nuis 2.

Tex.Civ.App.—Eastland 1938. “Negligence” always involves failure of duty, and consists of acts or omissions.—Metzger Dairies v. Wharton, 113 S.W.2d 675.—Neglig 250.

Tex.Civ.App.—Eastland 1937. “Negligence” of a defendant as an element in cause of action for damages involves a breach of duty owing by defendant to the plaintiff.—Wright v. McCoy, 110 S.W.2d 223.—Neglig 250.

Tex.Civ.App.—Eastland 1937. “Negligence” of a defendant as an element in cause of action for damages involves a breach of duty owing by defendant to the plaintiff while “contributory negligence” of a plaintiff involves a breach of duty to himself.—Wright v. McCoy, 110 S.W.2d 223.—Neglig 502(2).

Tex.Civ.App.—Eastland 1936. To constitute “negligence,” there must be some violation of duty, and the duty required is that of the wrongdoer to the very person claiming negligence.—Harrison v. Harrison, 100 S.W.2d 780.

Tex.Civ.App.—Eastland 1936. In action against bottling company for injuries from drinking bottled beverage containing a mouse, evidence that company put bottle on market containing a mouse warranted an inference of negligence so as to authorize maintenance of suit in county where cause of action arose, notwithstanding that company resided in another county. Vernon’s Ann.Civ.St. art. 1995, subd. 23. “Negligence,” in one sense, is a quality attaching to acts dependent upon, and arising out of, the duties and relations of the parties concerned, and is as much a fact to be found by the jury as the alleged acts to which it attaches by virtue of such duties and relations. The same would be just as true of omissions as of acts where the former instead of the latter were alleged to be negligence.—Texas Coca-Cola Bottling Co. v. Kubena, 90 S.W.2d 605.

Tex.Civ.App.—Eastland 1932. Where evidence did not conclusively show that defendant’s business was such that oil necessarily escaped from defendant’s land onto plaintiff’s land, action for resulting damage held for “negligence,” not “nuisance,” which, as respects limitations, did not accrue prior to infliction of injuries complained of.—Abilene &

S. Ry. Co. v. Herman, 47 S.W.2d 915, writ dismissed w.o.j.—Lim of Act 55(5).

Tex.Civ.App.—Tyler 1978. “Negligence” ... is breach of a duty; it is failure to exercise ordinary care, or doing of something that a person of ordinary prudence would not have done under similar circumstances or failure to do something that person of ordinary prudence would have done under same or similar circumstances.—Dodd v. Texas Farm Products, 567 S.W.2d 919, reversed 576 S.W.2d 812.—Neglig 232.

Tex.Civ.App.—Hous. [14 Dist.] 1973. “Negligence” is failure to do that which person of ordinary prudence would have done under same or similar circumstances or doing that which person of ordinary prudence would not have done under the same or similar circumstances.—Dickson v. J. Weingarten, Inc., 498 S.W.2d 388.—Neglig 232.

Tex.Civ.App.—Galveston 1950. The standard by which question of “negligence” must be tested is the common experience of mankind, and it implies generally want of that care and diligence which ordinarily prudent men would use to prevent injury under the circumstances of the particular case.—Texas & New Orleans R. Co. v. Goolsbee, 228 S.W.2d 280, cause remanded Goolsbee v. Texas & N. O. R. Co., 234 S.W.2d 407, 149 Tex. 445.—Neglig 232.

Tex.Civ.App.—Galveston 1950. “Negligence” rests primarily upon the two elements of reason to anticipate injury, and of failure to perform duty arising on account of that anticipation.—Texas & New Orleans R. Co. v. Goolsbee, 228 S.W.2d 280, cause remanded Goolsbee v. Texas & N. O. R. Co., 234 S.W.2d 407, 149 Tex. 445.—Neglig 213, 250.

Tex.Civ.App. 1910. In an action for delay in delivering a telegram, an instruction defining “negligence” as the failure to use ordinary care to deliver the message, and instructing that if, because of such failure, plaintiff was unable to be with his father before his death, he could recover such damages, if any, as he suffered on account of defendant’s negligence, was not objectionable as asserting as a fact that plaintiff was unable to be with his father before his death in consequence of defendant’s failure to deliver the telegram promptly.—Western Union Telegraph Co. v. Mack, 128 S.W. 921, 60 Tex.Civ.App. 644, writ refused.—Trial 194(15).

Tex.Civ.App. 1910. In the absence of a duty violated, there can be no “negligence.”—Missouri, K. & T. Ry. Co. of Texas v. Byrd, 124 S.W. 738, 58 Tex.Civ.App. 609.

Tex.Civ.App. 1909. “Negligence” is not a mere technical term, but means “a lack of due diligence or care; omission of duty; heedlessness,” and in a legal sense is no more nor less than the failure to observe, for the protection of the interest of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury; and as applied to an act done in discharge of a duty imposed, it is a failure to do what an ordinarily

prudent person would have done under the circumstances of the situation, or a doing of that which such a person under the existing conditions would not have done.—St. Louis & S.F.R. Co. v. Franklin, 123 S.W. 1150, 58 Tex.Civ.App. 41, writ refused.—Neglig 232.

Tex.Civ.App. 1909. In an action for injuries to plaintiff’s wife by his horse becoming frightened at defendant’s team covered by cloths decorated with advertising matter, an instruction presenting certain matters therein mentioned for the jury’s finding, and then informing them that if they believed from the evidence that defendant’s agent was negligent in driving the horses on the streets so decorated, and that such negligence, if any, was the proximate cause of the injury to plaintiff’s wife, plaintiff was entitled to a verdict, the term “negligence” having been correctly defined, was not objectionable as authorizing a verdict for plaintiff if the jury should find that defendant’s team was decorated, and plaintiff’s wife was injured in consequence of the horse taking fright at the decorations, regardless of any acts of negligence on the driver’s part other than his mere appearance on the street driving a decorated team.—Patton-Worsham Drug Co. v. Drennon, 123 S.W. 705, reversed 133 S.W. 871, 104 Tex. 62.—Mun Corp 706(8).

Tex.Civ.App. 1909. It is the duty of a carrier of passengers to exercise the highest degree of care that would be used by every prudent person under the same or similar circumstances to avoid and prevent injury to passengers upon its cars, and a failure to exercise such high degree of care constitutes “negligence.”—Galveston, H. & S.A. Ry. Co. v. Norton, 119 S.W. 702, 55 Tex.Civ.App. 478, writ refused.

Tex.Civ.App. 1909. “Negligence,” constituting a cause of action, is such an omission by a responsible person to use that degree of care, diligence, and skill, which it was his legal duty to use for the protection of another person from injury, as in a natural and continuous sequence causes unintended damages to the latter.—Pullman Co. v. Caviness, 116 S.W. 410, 53 Tex.Civ.App. 540, writ refused.

Tex.Civ.App. 1908. In an action against a railroad for injuries to an employee through a defective car step, an instruction that if defendant, through its inspectors and repairers, exercised ordinary care to see that the equipment of the car was in reasonably safe condition, “and were not guilty of negligence,” the verdict must be for defendant, was not misleading as adding, by the use of the words “and were not guilty of negligence,” something to defendant’s duty beyond the exercise of ordinary care; the court having clearly defined “negligence” as the failure to use ordinary care.—El Paso & S.W.R. Co. v. O’Keefe, 110 S.W. 1002, 50 Tex.Civ.App. 579, writ refused.

Tex.Civ.App. 1906. “Negligence” cannot exist unless there is a duty to the person injured, and it ought not be deemed negligence to do or to fail to do an act when it was not anticipated, and should not have been anticipated, that it would result in injury to any one.—Murphy v. Galveston, H. & N.

Ry. Co., 96 S.W. 940, reversed 101 S.W. 439, 100 Tex. 490, 9 L.R.A.N.S. 762.

Tex.Civ.App. 1906. "Negligence" is the failure to do what a prudent person would ordinarily have done under the circumstances of the situation, or doing what such person under the circumstances would not have done. The duty is indicated and measured by the exigencies of the occasion.—*International & G.N.R. Co. v. Trump*, 94 S.W. 903, 42 Tex.Civ.App. 536, certified question answered 97 S.W. 464, 100 Tex. 208, answer to certified question conformed to 98 S.W. 1101, 42 Tex.Civ.App. 536, writ refused.

Tex.Civ.App. 1906. In an instruction that "negligence" is a failure to do that which a person of ordinary care, prudence, and caution would do under like or similar circumstances, or the doing of that which a person of like prudence and caution would not do under the same circumstances, the words "like prudence" meant "ordinary prudence."—*St. Louis Southwestern Ry. Co. of Texas v. Dixon*, 91 S.W. 626, writ refused.

Tex.Civ.App. 1905. A charge that "negligence" as applied to a passenger is a failure to exercise ordinary care for his own safety—that is, such care as an "ordinarily prudent person" would exercise under the same or similar circumstances—was not erroneous in failing to require the passenger to use such care as a "person of ordinary prudence" would exercise.—*St. Louis Southwestern Ry. Co. of Texas v. Parks*, 90 S.W. 343, 40 Tex.Civ.App. 480, writ refused.

Tex.Civ.App. 1905. Defining "negligence" as the want or failure to use ordinary care—that is, that degree of care which an ordinarily prudent person would use under like circumstances to avoid injury or accident—does not define the degree of care required of a carrier in respect to a passenger getting on a car, which is, in substance, "such a high degree of foresight as to possible dangers, and such a high degree of prudence in guarding against them, as would be used by very cautious, prudent, and competent persons under similar circumstances."—*Green v. Houston Electric Co.*, 89 S.W. 442, 40 Tex.Civ.App. 260.

Tex.Civ.App. 1905. "Negligence" is the failure to exercise ordinary care. And "ordinary care" is that degree of care which an ordinary, prudent, and careful person would exercise under the same or similar circumstances.—*Gulf, C. & S.F. Ry. Co. v. Hays*, 89 S.W. 29, 40 Tex.Civ.App. 162, writ dismissed.

Tex.Civ.App. 1905. Gen.St.1901 Kan. § 5858, providing that railroad companies shall be liable for damages to any employé of said companies in consequence of any negligence of their agents, or of any mismanagement of their engineers or other employés to any person sustaining such damage, does not make a distinction between agents on the one hand, and engineers and other employés on the other, nor between "negligence" and mismanagement, but by the act a company is made responsible for any mismanagement of its engineers or other employés to any person sustaining damage there-

by.—*Missouri, K. & T. Ry. Co. of Texas v. Kellerman*, 87 S.W. 401, 39 Tex.Civ.App. 274, writ refused.

Tex.Civ.App. 1905. "Negligence" in a particular case is the failure to exercise such care as an ordinarily prudent person would exercise under the same or similar circumstances.—*Boyles v. Texas & P. Ry. Co.*, 86 S.W. 936.

Tex.Civ.App. 1905. What a person of ordinary prudence would or would not do under the particular circumstances is the true test of "negligence."—*Houston & T.C.R. Co. v. Everett*, 86 S.W. 17, reversed 89 S.W. 761, 99 Tex. 269.

Tex.Civ.App. 1905. It is not strictly accurate, but not reversible error, to instruct that "negligence" is the failure to do that which a person of ordinary prudence and intelligence would do under the same or similar circumstances, or the doing of that which a person of ordinary prudence and intelligence would not do under the same or similar circumstances.—*Houston & T.C.R. Co. v. Gray*, 85 S.W. 838, 38 Tex.Civ.App. 249, writ refused.

Tex.Civ.App. 1905. The test of "negligence" is what a person of ordinary prudence would or would not do, and not what ordinarily intelligent and prudent men would or would not do.—*Houston & T.C.R. Co. v. Brown*, 85 S.W. 44, 37 Tex.Civ.App. 595.

Tex.Civ.App. 1905. "Negligence" of a motorman toward an alighting passenger is a failure to use that high degree of care that a very prudent person would have used under like circumstances.—*San Antonio Traction Co. v. Warren*, 85 S.W. 26, writ refused.

Tex.Civ.App. 1904. In an action for injuries to a passenger, alleged to be due to the negligence of defendant's employees, the court properly instructed that "negligence" meant the failure to use the utmost care that would be used by every prudent person under like circumstances.—*Contreras v. San Antonio Traction Co.*, 83 S.W. 870.

Tex.Civ.App. 1904. By "negligence" is meant a failure to use such care and precaution as a person of ordinary prudence would use under like circumstances.—*Missouri, K. & T. Ry. Co. of Texas v. Wood*, 81 S.W. 1187.

Tex.Civ.App. 1904. The question of "negligence" is determinable by what an ordinarily prudent person would have done under the same or similar circumstances. If a person of ordinary prudence, standing in the place of an engineer, would have kept a lookout and discovered the burning bridge in time to have stopped the engine or slackened its speed, so that plaintiff, the fireman, could have alighted with reasonable safety before reaching the bridge, the failure of the engineer to do what such person of ordinary prudence would have done would constitute negligence.—*Missouri, K. & T. Ry. Co. v. Keaveney*, 80 S.W. 387.

Tex.Civ.App. 1904. "Negligence," when applied to a railroad company and its employés and servants while receiving and transporting passengers,

means the failure to use that degree of care which very cautious, prudent, and competent persons usually exercise.—*St. John v. Gulf, C. & S.F. Ry. Co.*, 80 S.W. 235.

Tex.Civ.App. 1903. "Negligence," as applied to a passenger suing for injuries, means the failure to use that degree of care that would be exercised by an ordinarily prudent person under the same circumstances.—*Williams v. Galveston, H. & S.A. Ry. Co.*, 78 S.W. 45, 34 Tex.Civ.App. 145, writ refused.

Tex.Civ.App. 1903. "Negligence" is the want of such care and caution as an ordinarily prudent man would exercise under the same circumstances. An instruction defining negligence to be the want of such care and caution as an "ordinary" prudent man would exercise under the circumstances was not erroneous because of the use of the word "ordinary," instead of the "ordinarily."—*Ft. Worth & D.C. Ry. Co. v. Partin*, 76 S.W. 236, 33 Tex.Civ. App. 173, writ refused.

Tex.Civ.App. 1903. "Negligence," when applied to carriers of passengers, means the failure of a performance of duty, imposed by law for the protection of others, to exercise that high degree of care in acting and refraining from acting which very competent and prudent persons would usually exercise under the same or other similar circumstances.—*St. Louis Southwestern Ry. Co. v. Harrison*, 73 S.W. 38, 32 Tex.Civ.App. 368, writ refused.

Tex.Civ.App. 1896. "Negligence" means a failure to exercise such caution and care as a reasonably prudent and cautious person would usually exercise with reference to a similar matter in similar circumstances.—*Gulf, C. & S.F. Ry. Co. v. Pendery*, 36 S.W. 793, 14 Tex.Civ.App. 60, writ refused.

Tex.Civ.App. 1893. The term "negligence" does not necessarily include incompetency, since a competent man may at times be negligent.—*Texas Cent. Ry. Co. v. Rowland*, 22 S.W. 134, 3 Tex.Civ. App. 158.

Utah 1991. Breach of duty owed constitutes "negligence."—*Reeves v. Gentile*, 813 P.2d 111.—Neglig 250.

Utah 1981. "Negligence" is a failure to do what a reasonable and prudent person would have done under the circumstances, or doing what such person under such circumstances would not have done; fault may be in acting or omitting to act.—*Meese v. Brigham Young University*, 639 P.2d 720.—Neglig 233.

Utah 1967. "Negligence" is the breach of a duty to use due care under the circumstances of the situation.—*Wheeler v. Jones*, 431 P.2d 985, 19 Utah 2d 392.—Neglig 231.

Utah 1966. "Negligence" is the failure to exercise the degree of care an ordinary, reasonable, and prudent person would use under similar circumstances.—*Evans v. Stuart*, 410 P.2d 999, 17 Utah 2d 308.—Neglig 233.

Utah 1961. "Negligence" is failure to use reasonable care so that a person is exposed to unreasonable risk of harm.—*Mortensen v. First Sec.*

Bank of Utah, 363 P.2d 75, 12 Utah 2d 89.—Neglig 233.

Utah 1950. Proof that employee of express company was ordered by his superior to service and adjust charcoal burners in refrigerator cars without assistance from any other employee in violation of company's rules failed to establish "negligence" entitling employee to recover from company for injuries sustained as result of being overcome by carbon monoxide gas while doing the work, in absence of explanation as to how situation would have been different and injury not suffered had employee been assisted by another employee.—*Moleton v. Union Pac. R. Co.*, 219 P.2d 1080, 118 Utah 107, certiorari denied 71 S.Ct. 495, 340 U.S. 932, 95 L.Ed. 672.—Emp Liab 208.

Utah 1947. "Negligence" is the omission to do something which a reasonable person, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent person under like circumstances would not do.—*Lasagna v. McCarthy*, 177 P.2d 734, 111 Utah 269, certiorari denied 68 S.Ct. 205, 332 U.S. 829, 92 L.Ed. 403.—Neglig 233.

Utah 1942. Where automobile driver, while proceeding on his right hand side of highway on a right curve near a fork in the highway, observed approaching him around the curve, a truck, which at a distance of only 225 feet was proceeding on truck driver's left hand side of highway the fact that automobile driver in attempting to avoid collision, turned to his left at about the time truck driver turned to his right, resulting in head-on collision at the outer edge of the fork of the highway to automobile driver's left, did not constitute "negligence" of automobile driver imposing on him liability for death of truck driver.—*Morrison v. Perry*, 122 P.2d 191, 104 Utah 139.—Autos 159.

Utah 1940. Failure to exercise such care as would be exercised by a person of ordinary prudence under the same or similar circumstances, which degree of care may vary with the probability of danger to be apprehended, constitutes "negligence."—*White v. Pinney*, 108 P.2d 249, 99 Utah 484.—Neglig 232.

Utah 1933. "Negligence," whether "primary" or otherwise, is failure to do what reasonably prudent person would do, or doing what such person would not have done, under circumstances, and results from either active violation or neglect of duty.—*Miller v. Southern Pac. Co.*, 21 P.2d 865, 82 Utah 46, certiorari denied 54 S.Ct. 207, 290 U.S. 697, 78 L.Ed. 600.—Neglig 233.

Utah 1930. In absence of duty, there is no "negligence."—*Christiansen v. Los Angeles & S.L.R. Co.*, 291 P. 926, 77 Utah 85.—Neglig 210.

Utah 1909. While the ordinary test of "negligence" is whether a man of ordinary intelligence and prudence would have done or omitted the act in question under the circumstances, yet there are circumstances under which the law does not permit an act or its omission to be excused because some persons would have been willing to undertake it, for

the hazard may be apparent and serious.—*Stone v. Union Pac. R. Co.*, 100 P. 362, 35 Utah 305.

Utah 1907. "Negligence" consists in conduct which common experience or the special knowledge of the action shows to be so likely to produce the result complained of, under the circumstances known to the actor, that he is held answerable for that result, although it was not certain, intended or foreseen. "Railroad companies, like natural persons, must so use their property and privileges as not to injure the rights of others, and in running and operating their cars must exercise care proportionate to the danger of injury to others. When, in the exercise of such care, ordinary caution and prudence requiring the giving of signals or warning, the failure to do so is 'negligence.'" Where trainmen, in charge of a train obstructing a crossing, in the exercise of ordinary care ought to have anticipated that persons in the act of crossing might be on or between or about the cars, and that not to give warning before moving the train would result in injury, their failure to give such warning was "negligence."—*Gesas v. Oregon Short Line R. Co.*, 93 P. 274, 33 Utah 156, 13 L.R.A.N.S. 1074.

Utah 1904. Evidence that defendant's brakeman pushed plaintiff from the steps of the train, on which he was a trespasser, while it was going at a speed of from 12 to 20 miles an hour, showing unnecessary acts, which would not have been performed by a reasonable and prudent person, an instruction defining "negligence" is pertinent.—*Klenk v. Oregon Short Line R. Co.*, 76 P. 214, 27 Utah 428.—*Carr* 375.

Vt. 1999. "Negligence" is failure to exercise the care that the circumstances reasonably require or justly demand.—*Brown v. Roadway Exp., Inc.*, 740 A.2d 352, 169 Vt. 633.—*Neglig* 202.

Vt. 1969. "Negligence" is the failure to exercise care which the circumstances reasonably require or justly demand.—*Thurber v. Russ Smith, Inc.*, 260 A.2d 390, 128 Vt. 216.—*Neglig* 230.

Vt. 1967. Determination of what a careful and prudent person would have done under like circumstances, acting on his judgment at time of the accident, rather than on a judgment based on subsequent reflection, is the true test of "negligence."—*Garafano v. Neshobe Beach Club, Inc.*, 238 A.2d 70, 126 Vt. 566.—*Neglig* 233.

Vt. 1942. Failure of railroad to furnish specially designed safety wrench in place of frog wrench for use in opening car hoppers did not constitute "negligence" rendering railroad liable under Federal Employers' Liability Act for death of section hand resulting from injuries sustained in fall from dry bridge while opening hopper, in the absence of evidence that frog wrench which had been used for the purpose for many years was not reasonably safe and suitable for that purpose. Federal Employers' Liability Act § 1 et seq., 45 U.S.C.A. § 51 et seq.—*Bailey v. Central Vermont Ry.*, 28 A.2d 639, 113 Vt. 8, certiorari granted 63 S.Ct. 768, 318 U.S. 751, 87 L.Ed. 1127, reversed 63 S.Ct. 1062, 319 U.S. 350, 87 L.Ed. 1444, conformed to 35 A.2d 365, 113 Vt. 433.—*Emp Liab* 45.

Vt. 1940. The standard to which a physician must conform applies not only to physician's treatment of patient's disease or injury but as well to his diagnosis of the malady, and hence "negligence" may exist in a failure to apply proper remedy upon correct determination of existing physical condition or it may precede that and result from a failure properly to inform himself of these conditions.—*Domina v. Pratt*, 13 A.2d 198, 111 Vt. 166.—*Health* 637.

Vt. 1940. A physician must give his patient as careful and thorough an examination as circumstances permit, using such care and skill and such methods of diagnosis for discovering nature of ailment as are required by rules of good local practice, and if by exercise of such care and skill, combined with reasonable opportunity for examination, patient's true condition could have been discovered, failure to discover it will amount to actionable "negligence."—*Domina v. Pratt*, 13 A.2d 198, 111 Vt. 166.—*Health* 637.

Vt. 1931. Ordinary "negligence" is failure to exercise that degree of care and prudence which prudent man would exercise under like circumstances.—*Sorrell v. White*, 153 A. 359, 103 Vt. 277.—*Neglig* 230.

Vt. 1931. "Gross negligence" is substantially and appreciably higher in magnitude and more culpable than ordinary "negligence."—*Sorrell v. White*, 153 A. 359, 103 Vt. 277.—*Neglig* 273.

Vt. 1917. In a powder man's action for injuries from premature explosion of a blast which he was ordered to make by the quarry company's foreman, the submission to the jury of the question of the foreman's incompetency as a fellow servant, in the absence of anything in the evidence tending to show any circumstances attending his alleged negligent act from which it could be inferred that he was incompetent, was error; "incompetency" and "negligence" not being convertible terms, for the most competent may sometimes be negligent, while incompetence goes to reliability in all that is essential to make up a reasonably safe person, considering the nature of the work and the general safety of those required to associate with such person in the general employment.—*Barclay v. Wetmore & Morse Granite Co.*, 102 A. 493, 92 Vt. 195.

Vt. 1906. "Negligence" is a shortage of legal duty that causes injury. The fact that an act is in violation of law does not dispense with an inquiry as to the relation which that act sustains to the injury complained of, and if it is not an efficient cause of injury there is no liability. Where a train was obstructing a highway crossing in violation of law, and plaintiff, mistaking a signal for an invitation to cross, attempted to cross between two cars and was injured, the proximate cause of the accident was not the obstruction, and the railroad company was not liable.—*Corbin v. Grand Trunk R. Co.*, 63 A. 138, 78 Vt. 458.

Va. 1995. Insured's failure to read or to have someone read insurance policy that left his property underinsured constituted contributory "negligence" as matter of law and barred recovery against inde-

pendent agent for failure to procure adequate insurance coverage.—General Ins. of Roanoke, Inc. v. Page, 464 S.E.2d 343, 250 Va. 409.—Insurance 1671.

Va. 1968. “Negligence” is the failure to use ordinary care, and “gross negligence” is that degree of negligence which shows utter disregard of prudence amounting to complete neglect for safety of another.—Sturman v. Johnson, 163 S.E.2d 170, 209 Va. 227.—Neglig 232, 273.

Va. 1961. To constitute “negligence” there must be a duty owed and breach of such duty.—General Bronze Corp. v. Kostopulos, 122 S.E.2d 548, 203 Va. 66.—Neglig 250.

Va. 1949. Failure to keep a proper lookout or driving in center of highway when there is approaching traffic constitutes “negligence”.—Via v. Badanes, 52 S.E.2d 174, 189 Va. 44.—Autos 150, 153.

Va. 1949. Where drivers of automobile and truck approaching each other in plain view on a wide highway continued to drive on or so near center of highway that they could not meet in safety, both were guilty of “negligence” and “reckless driving” in violation of statute. Code 1942, § 2154(108)(a).—Via v. Badanes, 52 S.E.2d 174, 189 Va. 44.—Autos 158.

Va. 1948. Violation of a statute or municipal ordinance adopted for the safety of the public constitutes “negligence”, but standard of care thus prescribed by legislative body is not the exclusive standard to which conduct of a responsible party must conform to avoid being negligent.—Moore v. Virginia Transit Co., 50 S.E.2d 268, 188 Va. 493.—Neglig 238, 259.

Va. 1948. Failure to conform to standard of conduct of a reasonable man under like circumstances constitutes “negligence.”—Moore v. Virginia Transit Co., 50 S.E.2d 268, 188 Va. 493.—Neglig 233.

Va. 1948. “Negligence” is failure to do what a reasonable and prudent person would ordinarily have done under the circumstance, or doing what such person would not have done under existing circumstances, the duty being measured by exigencies of the occasion.—Moore v. Virginia Transit Co., 50 S.E.2d 268, 188 Va. 493.—Neglig 233.

Va. 1948. “Negligence” carries with it liability for consequences which in the light of attendant circumstances could reasonably have been anticipated by a prudent man but not for casualties which, though possible, were wholly improbable.—Corbett v. Clarke, 46 S.E.2d 327, 187 Va. 222.—Neglig 387.

Va. 1946. Where a motorist knows, or by ordinary care should know, that children are present or are likely to be present on a highway, failure to exercise that degree of care that a careful man would exercise under the same situation is “negligence”.—Clark v. Hodges, 39 S.E.2d 252, 185 Va. 431.—Autos 162(1).

Va. 1945. “Gross negligence” is substantially higher in magnitude than ordinary “negligence”,

being the absence of slight diligence or want of even scant care, or a heedless and palpable violation of legal duty respecting rights of others.—Town of Big Stone Gap v. Johnson, 35 S.E.2d 71, 184 Va. 375.—Neglig 273.

Va. 1943. Interstate carrier’s liability under Federal Employers’ Liability Act for injury to employee is to be determined under general rule defining “negligence” as lack of due care under the circumstances, or failure to do what reasonable and prudent man would ordinarily have done under the circumstances, or doing what reasonable and prudent man under the existing circumstances would not have done. Federal Employers’ Liability Act § 1 et seq., 45 U.S.C.A. § 51 et seq.—Beamer v. Virginian Ry. Co., 26 S.E.2d 43, 181 Va. 650, certiorari denied 64 S.Ct. 486, 321 U.S. 763, 88 L.Ed. 1060.—Emp Liab 11.

Va. 1943. “Negligence” is the failure to perform some act required by law or doing the act in improper manner.—Acme Markets v. Remschel, 24 S.E.2d 430, 181 Va. 171.—Neglig 200.

Va. 1942. In view of traffic conditions in the City of Norfolk, the stopping of a bus to permit passengers to alight some distance from designated stopping point because of the presence at that point of another bus did not constitute “negligence”.—Virginia Electric & Power Co. v. Thomas, 23 S.E.2d 148, 180 Va. 292.—Carr 303(1).

Va. 1942. Evidence that passenger was injured when after alighting from bus that had been stopped some distance from designated stopping point because of the presence at that point of another bus, she stepped into a hole in the pavement which being filled with water gave the appearance of an unbroken pavement and that neither city nor bus company had notice of the existence of such hole failed to establish “negligence” on the part of bus company, and hence was insufficient to sustain verdict and judgment against bus company.—Virginia Electric & Power Co. v. Thomas, 23 S.E.2d 148, 180 Va. 292.—Carr 318(8).

Va. 1942. “Negligence” is in one aspect the failure to do a particular act, but in another and more correct aspect it is the doing of one act in a manner which amounts to negligence in that some other act which ought to have accompanied it is omitted.—Jackson v. Chesapeake & O. Ry. Co., 20 S.E.2d 489, 179 Va. 642.—Neglig 200.

Va. 1942. Where a course of conduct is not prescribed by mandate of law, foreseeability of injury to one to whom duty is owed is of the very essence of “negligence”, and if injurious consequences are not foreseen as a result of the conduct, then that conduct is not negligent.—Cleveland v. Danville Traction & Power Co., 18 S.E.2d 913, 179 Va. 256.—Neglig 213.

Va. 1942. That there is an accident, and some person is hurt does not prove “negligence”.—Cleveland v. Danville Traction & Power Co., 18 S.E.2d 913, 179 Va. 256.—Neglig 1579.

Va. 1942. “Negligence” in law involves the conception of a duty to act in a certain way toward

others, and a violation of that duty by acting otherwise.—*Cleveland v. Danville Traction & Power Co.*, 18 S.E.2d 913, 179 Va. 256.—Neglig 250.

Va. 1942. That motor bus, which could not stop at regular bus stop designated by city because an automobile was parked there, was stopped just beyond at a point at which the sidewalk and curb, which were four inches above the level of the street, were broken by a gradually sloping paved driveway, did not constitute “negligence” rendering motor bus operator liable for injuries sustained by passenger in alighting from the bus.—*Cleveland v. Danville Traction & Power Co.*, 18 S.E.2d 913, 179 Va. 256.—Carr 303(6).

Va. 1941. A violation of statute providing that a truck or bus shall not follow another truck or bus outside of corporate limits of cities or towns within 200 feet is “negligence,” and if such negligence is the proximate cause of injury to another, then such other may recover. Code 1936, § 2154(119)(b).—*Isenhour v. McGranighan*, 17 S.E.2d 383, 178 Va. 365.—Autos 172(7), 201(1.1).

Va. 1940. The violation of statutes defining reckless driving as including the passing of another vehicle where driver’s view is obstructed, and prohibiting driving on left side of highway unless left side is clearly visible and free of oncoming traffic, standing alone, convicts driver of “negligence.” Acts 1938, c. 84, §§ 61(b)(2), 71.—*Wright v. Osborne*, 9 S.E.2d 452, 175 Va. 442.—Autos 153, 172(2).

Va. 1938. “Negligence” is the failure of defendant to use ordinary care for the safety of another.—*Yeary v. Holbrook*, 198 S.E. 441, 171 Va. 266.—Neglig 232.

Va. 1937. “Negligence” is a breach of a legal duty owed by one person to another.—*C. D. Kenny Co. v. Dennis*, 189 S.E. 164, 167 Va. 417.—Neglig 250.

Va. 1937. “Negligence” is a failure to exercise that degree of care for safety of others that reasonable and prudent man would and does exercise, under like circumstances.—*C. D. Kenny Co. v. Dennis*, 189 S.E. 164, 167 Va. 417.—Neglig 233.

Va. 1932. “Negligence” lies in omission of due care in performance of some duty.—*Filer v. McNair*, 163 S.E. 335, 158 Va. 88.—Neglig 250.

Va. 1931. “Negligence” lies in omission of due care in performance of some duty.—*Boggs v. Plybon*, 160 S.E. 77, 157 Va. 30.—Neglig 250.

Va. 1924. “Negligence” is failure to use that degree of care which one of ordinary intelligence and prudence might reasonably be expected to use in the particular circumstances.—*Chesapeake & O. Ry. Co. v. Crum*, 125 S.E. 301, 140 Va. 333.—Neglig 233.

Va. 1919. Mere failure of a servant to observe, when there is no occasion for observation, is not “negligence.”—*E.I. Dupont de Nemours & Co. v. Taylor*, 98 S.E. 866, 124 Va. 750.—Emp Liab 151.

Va. 1914. “Negligence” is a failure to observe that degree of care which the circumstances require, and any failure on the part of the master to exercise that reasonable degree of care required is “actionable negligence.”—*Darby Coal Min. Co. v. Shoop*, 83 S.E. 412, 116 Va. 848.

Va. 1909. The burden is on plaintiff of proving actionable negligence, notwithstanding the rule making “negligence” for the jury where reasonable men might differ on the question.—*Baughner v. Harman*, 66 S.E. 86, 110 Va. 316.

Va. 1909. “Negligence” consists in a legal duty to use care, and its breach, without intention to produce the precise damage which follows, and, in order to be “actionable negligence,” must be followed by damage to plaintiff, resulting in a natural and continuous sequence.—*Interstate R. Co. v. Tyree*, 65 S.E. 500, 110 Va. 38.

Va. 1909. “Negligence” consists of the failure to use ordinary care under the circumstances.—*Smith’s Adm’r v. Norfolk & P. Traction Co.*, 63 S.E. 1005, 109 Va. 453.

Va. 1908. There can be no “negligence” where there is no breach of duty. It must appear that defendant owed a duty and also that he did not perform it.—*Roanoke Ry. & Electric Co. v. Sterrett*, 62 S.E. 385, 108 Va. 533, 19 L.R.A.N.S. 316, 128 Am.St.Rep. 971.

Va.App. 1996. “Negligence” required in criminal proceeding must be more than lack of ordinary care and precaution; it must be something more than mere inadvertence or misadventure, rather a recklessness or indifference incompatible with proper regard for human life.—*Mosby v. Com.*, 473 S.E.2d 732, 23 Va.App. 53.—Crim Law 23.

Wash. 2001. In determining whether a lawyer has committed misconduct, the lawyer’s mental state may be evaluated on the basis of intent, knowledge or negligence: “intent” involves acting with the conscious objective to accomplish a particular result; there is “knowledge” when the lawyer has the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result; lawyer acts with “negligence” when the lawyer fails to heed a substantial risk that circumstances exist or that a result will follow and that failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.—*In re Juarez*, 24 P.3d 1040, 143 Wash.2d 840.—Atty & C 37.1.

Wash. 1998. “Negligence” is the failure to act reasonably under the circumstances. Restatement (Second) of Torts § 282.—*ESCA Corp. v. KPMG Peat Marwick*, 959 P.2d 651, 135 Wash.2d 820.—Neglig 200, 233.

Wash. 1985. Express assumption of risk is not “negligence,” but, rather, is merely a form of waiver or consent.—*Shorter v. Drury*, 695 P.2d 116, 103 Wash.2d 645, certiorari denied 106 S.Ct. 86, 474 U.S. 827, 88 L.Ed.2d 70.—Neglig 554(1).

Wash. 1975. "Negligence" consists of the existence of a duty owed to the complaining party, breach thereof and resulting injury.—*LaPlante v. State*, 531 P.2d 299, 85 Wash.2d 154.—Neglig 202.

Wash. 1967. Word "negligence" connotes failure of duty to exercise due care.—*Callahan v. Keystone Fireworks Mfg. Co.*, 435 P.2d 626, 72 Wash.2d 823.—Neglig 231.

Wash. 1967. "Negligence" is failure to exercise reasonable or ordinary care.—*Gordon v. Deer Park School Dist.* No. 414, 426 P.2d 824, 71 Wash.2d 119.—Neglig 233.

Wash. 1965. It would not be error in host-guest automobile case to instruct jury that "negligence" means failure to do something which reasonably careful person would do or doing of something which reasonably careful person would not do under circumstances similar to those shown by evidence, and that "gross negligence" means more than ordinary negligence, great negligence, and negligence in a very high degree, or absence of slight care. RCWA 46.08.080.—*Dole v. Goebel*, 407 P.2d 807, 67 Wash.2d 337.—Autos 246(2.1), 246(3).

Wash. 1959. The elements of actionable "negligence" are the existence of a duty, breach thereof, which must be a proximate cause of injury, and resulting damage.—*Lewis v. Scott*, 341 P.2d 488, 54 Wash.2d 851.—Neglig 202.

Wash. 1956. "Negligence," as applied to a municipality in the performance of a corporate or ministerial function, is an unintentional breach of a legal duty, causing damage reasonably foreseeable, without which breach the damage could not occur.—*Sigurdson v. City of Seattle*, 292 P.2d 214, 48 Wash.2d 155.—Mun Corp 725.

Wash. 1955. "Negligence" consists in the doing of an act which a reasonable man would not have done, or in failure to do an act which a reasonable man would have done under similar circumstances.—*System Tank Lines v. Dixon*, 286 P.2d 704, 47 Wash.2d 147.—Neglig 233.

Wash. 1953. "Willful or wanton misconduct" is not, properly speaking, within term "negligence", which conveys idea of neglect or inadvertence, as distinguished from premeditation or formed intention, and an act into which knowledge of danger and willfulness enters is not negligence of any degree, but is willful misconduct.—*Addisson v. City of Seattle*, 258 P.2d 461, 42 Wash.2d 676.—Neglig 201, 275.

Wash. 1950. "Negligence" is an unintentional breach of a legal duty causing damage reasonably foreseeable without which breach the damage could not have occurred.—*Harvey v. Auto Interurban Co.*, 220 P.2d 890, 36 Wash.2d 809.—Neglig 202.

Wash. 1946. The essential elements of actionable "negligence" are the existence of a duty, a breach thereof, and a resulting injury.—*McCoy v. Courtney*, 172 P.2d 596, 25 Wash.2d 956, 170 A.L.R. 603.—Neglig 202.

Wash. 1943. A railroad locomotive engineer's failure to ring bell or sound whistle at least eighty rods from highway crossing and until locomotive has crossed highway, as required by statute, constitutes "negligence" as matter of law. RCW 81.48.010.—*Cox v. Polson Logging Co.*, 138 P.2d 169, 18 Wash.2d 49.—R R 313.

Wash. 1943. Noncompliance with statute requiring engineer to ring bell or sound whistle upon approaching highway and continue the ringing of the bell or sounding of whistle until locomotive shall have crossed highway is "negligence". RCW 81.48.010.—*Hendrickson v. Union Pac. R. Co.*, 136 P.2d 438, 17 Wash.2d 548, 161 A.L.R. 96.—R R 313.

Wash. 1942. A thing which is done in violation of positive law is in itself "negligence".—*Portland-Seattle Auto Freight v. Jones*, 131 P.2d 736, 15 Wash.2d 603.

Wash. 1942. "Negligence" is not a positive thing but it is to be found according to the circumstances of each case, and must be determined in view of all the facts and conditions attendant at the time and place of the accident.—*Sellman v. Hess*, 130 P.2d 688, 15 Wash.2d 310.

Wash. 1942. In order for there to be "negligence", there must be a breach of duty owing by the person against whom the claim of negligence is made.—*Finnemore v. Alaska S. S. Co.*, 124 P.2d 956, 13 Wash.2d 276.—Neglig 250.

Wash. 1941. "Contributory negligence" differs from negligence which subjects actor to liability for harm done to others, in that "negligence" is conduct which creates an undue risk of harm to others, and "contributory negligence" is conduct which involves undue risk of harm to a person who sustains it, and in "negligence" the "reasonable man" whose conduct furnishes a standard to which all normal adults must conform, is a person who pays reasonable regard to safety of others, and in "contributory negligence" the "reasonable man" is a "reasonably prudent man", who as such pays reasonable regard to his own safety.—*Hynek v. City of Seattle*, 111 P.2d 247, 7 Wash.2d 386.

Wash. 1940. In passenger's action against bus owners for injuries sustained in collision with automobile, failure to put word "slightest" before word "negligence" in instruction that owners were bound to exercise greatest degree of car and diligence in operation of bus and were liable for negligence of driver was not error, since instruction was sufficient in the form in which it was given.—*Anderson v. Harrison*, 103 P.2d 320, 4 Wash.2d 265.—Carr 321(1).

Wash. 1940. "Negligence" consists of the absence of such care, prudence, and forethought as under the circumstances duty required should be given or exercised.—*Anderson v. Harrison*, 103 P.2d 320, 4 Wash.2d 265.—Neglig 230.

Wash. 1940. The basis of the law of "negligence" is the ability of the actor reasonably to foresee consequences of his misconduct, and, if a particular injury was reasonably expectable at time

of misconduct, the act of negligence will be regarded as the "proximate cause" of the injury sustained.—*Eckerson v. Ford's Prairie School Dist.* No. 11 of Lewis County, 101 P.2d 345, 3 Wash.2d 475.—Neglig 387.

Wash. 1939. A physician is not charged with "negligence" merely because result is not what was desired.—*Sinclair v. Haven*, 89 P.2d 820, 198 Wash. 651.—Health 625.

Wash. 1937. "Negligence" is an unintentional breach of a legal duty causing damage reasonably foreseeable without which breach the damage would not have occurred.—*Ullrich v. Columbia & C. Ry. Co.*, 66 P.2d 853, 189 Wash. 668.—Neglig 250.

Wash. 1933. "Negligence" has been defined as want of care required by circumstances; as an omission of duty imposed by statute or implied by law, and as consisting in doing some act which should not have been done, or in omitting some act which should have been done.—*Malland v. Sims*, 24 P.2d 70, 173 Wash. 649, amended on rehearing 27 P.2d 1119, 173 Wash. 649.

Wash. 1932. Instruction defining "negligence" as failure to use ordinary care, and "gross negligence" as failure to observe slight care, held not unfavorable to defendants.—*Wold v. Gardner*, 8 P.2d 975, 167 Wash. 191.—App & E 1033(5).

Wash. 1927. Doing something in violation of positive law in itself constitutes "negligence."—*Millsbaugh v. Alert Transfer & Storage Co.*, 259 P. 22, 145 Wash. 111.

Wash. 1914. The "negligence" for which an interstate carrier by railroad is liable under Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51, held the negligence of officers, agents, or employees in the course of their employment, so that a servant could not recover thereunder for injuries sustained by being pushed out of a car door by fellow servants wrestling in the car.—*Reeve v. Northern Pac. Ry. Co.*, 144 P. 63, 82 Wash. 268, L.R.A. 1915C,37.—Emp Liab 105.

Wash. 1913. "Negligence" is an omission of duty imposed by statute or implied by law; but an act which may result in harm to another is not negligence, unless its consequences are such as could have been reasonably foreseen and guarded against.—*Mayhew v. Yakima Power Co.*, 130 P. 485, 72 Wash. 431.

Wash. 1911. "Negligence" is a breach of that duty which one person owes to another by reason of the relation existing between them, the duty in each particular case being tested by what an ordinarily prudent person would do in a like situation.—*Chilberg v. Standard Furniture Co.*, 115 P. 837, 63 Wash. 414, 34 L.R.A.N.S. 1079.

Wash. 1910. The test of "negligence" is not what an ordinarily prudent person would do or omit to do generally, but what an ordinarily prudent person would do or omit to do under circumstances like and similar to those surrounding the person whose conduct is under test. In other words, "negli-

gence" is the want of care required by the circumstances.—*Olmstead v. City of Olympia*, 109 P. 602, 59 Wash. 147.

Wash.App. Div. 1 1992. "Negligence" is failure to be aware of substantial risk of which reasonable person would have been aware.—*Johnson v. Employment Sec. Dept.*, 824 P.2d 505, 64 Wash.App. 311.—Neglig 233.

Wash.App. Div. 2 1991. "Negligence" incorporates concept of contributory fault, including unreasonable failure to avoid injuries or to mitigate damages.—*Clark v. Payne*, 810 P.2d 931, 61 Wash. App. 189, review denied 818 P.2d 1099, 117 Wash.2d 1022.—Damag 59; Neglig 506(8).

Wash.App. Div. 3 1969. Elements of "negligence" are existence of a duty, a breach thereof which was proximate cause of a resulting injury and the injury.—*Jurgens v. American Legion, Dept. of Wash., Cashmere Post No. 64, Inc.*, 459 P.2d 79, 1 Wash.App. 39.—Neglig 202.

W.Va. 2001. "Negligence" is either the failure to do what reasonable and prudent person would ordinarily have done under the circumstances or doing what such person under existing circumstances would not have done.—*Honaker v. Mahon*, 552 S.E.2d 788, 210 W.Va. 53.—Neglig 232, 233.

W.Va. 1997. Railroad employer's FELA liability is to be determined under general rule which defines "negligence" as lack of due care under circumstances, failure to do what reasonable and prudent man would ordinarily have done under circumstances of situation, or doing what such person under existing circumstances would not have done. Federal Employers' Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.—*Gardner v. CSX Transp., Inc.*, 498 S.E.2d 473, 201 W.Va. 490.—Emp Liab 11.

W.Va. 1996. Term "negligence," standing alone, means simply the failure of reasonably prudent person to exercise due care in his conduct toward others from which injury might occur.—*State v. Ivey*, 474 S.E.2d 501, 196 W.Va. 571.—Neglig 233.

W.Va. 1968. Truck passenger's giving truck operator a wild look, grabbing steering wheel, and placing his foot on accelerator so that operator lost control and drove truck into tree on wrong side of highway constituted "negligence" but not "wilful and wanton conduct".—*Groves v. Groves*, 158 S.E.2d 710, 152 W.Va. 1.—Autos 158.

W.Va. 1966. "Negligence" conveys the idea of heedlessness, inattention or inadvertence while "wilful and wanton misconduct" connotes purpose or design, actual or constructive.—*Korzun v. Shahan*, 151 S.E.2d 287, 151 W.Va. 243.—Neglig 201, 275.

W.Va. 1956. "Negligence" is the failure of a reasonably prudent person to exercise due care in his conduct toward others, from which injury may occur.—*Walker v. Robertson*, 91 S.E.2d 468, 141 W.Va. 563, rehearing denied.—Neglig 233.

W.Va. 1953. "Negligence" conveys the idea of heedlessness, inattention, inadvertence.—*Spence v. Browning Motor Freight Lines, Inc.*, 77 S.E.2d 806, 138 W.Va. 748.—Neglig 200.

W.Va. 1948. "Negligence" conveys the idea of heedlessness, inattention, inadvertence; "willfulness" and "wantonness" convey the idea of purpose or design, actual or constructive, and in some jurisdictions are used to signify a higher degree of neglect than "gross negligence".—*Kelly v. Checker White Cab*, 50 S.E.2d 888, 131 W.Va. 816.—Neglig 201, 275.

W.Va. 1948. Where taxicab skidded frequently at dangerous speed, but driver was able to control it for 82 miles until unexpected meeting with truck, his conduct constituted "negligence" but not "willful and wanton conduct" and hence did not render taxicab owner liable to driver's gratuitous invitee.—*Kelly v. Checker White Cab*, 50 S.E.2d 888, 131 W.Va. 816.—Autos 181(7).

W.Va. 1944. "Negligence" conveys the idea of heedlessness, inattention, inadvertence, while "willfulness" and "wantonness" convey the idea of purpose or design, actual or constructive.—*Stone v. Rudolph*, 32 S.E.2d 742, 127 W.Va. 335.—Neglig 275.

W.Va. 1943. An instruction defining "negligence" as the doing of an act which a reasonably prudent person in the same or similar circumstances would not do or the omission to do an act which a reasonably prudent person in the same or similar circumstances would have done, was proper.—*Otte v. Miller*, 24 S.E.2d 90, 125 W.Va. 317.—Neglig 233.

W.Va. 1939. Under statute providing that no vehicle shall exceed height of 12 feet 6 inches, a telephone company maintaining wire above highway was not guilty of actionable "negligence" for which it would be liable for death of helper on truck who was killed when crushed by transformer which fell from truck when it caught on wire at height of not less than 13 feet 10 inches above pavement, since accident would not have occurred had truck been of height not in excess of legal limits. Code 1937, 17-8-19(a, b).—*Osborne v. Chesapeake & Potomac Tel. Co.*, 3 S.E.2d 527, 121 W.Va. 357.—Tel 120.1.

W.Va. 1936. Terms "ordinary negligence" and "gross negligence," strictly speaking, are indicative rather of degree of care and diligence which is due from a party and which he fails to perform than of the amount of inattention, carelessness, or stupidity which he exhibits. If very little care is due from him, and he fails to bestow that little, it is called "gross negligence." If very great care is due, and he fails to come up to the mark required, it is called "slight negligence." And if ordinary care is due, such as a prudent man would exercise in his own affairs, failure to bestow that amount of care is called "ordinary negligence." In each case, the negligence, whatever epithet we give it, is failure to bestow the care and skill which the situation demands; and hence it is more strictly accurate perhaps to call it simply "negligence."—*Wood v. Shrewsbury*, 186 S.E. 294, 117 W.Va. 569.

W.Va. 1935. "Negligence" is conduct unaccompanied by that degree of consideration attributable to man of ordinary prudence under like circumstances.—*Patton v. City of Grafton*, 180 S.E. 267, 116 W.Va. 311.—Neglig 232.

W.Va. 1932. "Negligence" is defined as the failure to observe, for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.—*Woodley v. Steiner*, 164 S.E. 294, 112 W.Va. 356.

W.Va. 1926. "Negligence" in official conduct is ordinarily failure to use such reasonable care and caution as would be expected of prudent man (Code, c. 28A, § 12).—*Hamrick v. McCutcheon*, 133 S.E. 127, 101 W.Va. 485.—Offic 64.

W.Va. 1909. "Negligence," as well as contributory negligence, in the great majority of cases, is a mixed question of law and fact.—*Ewing v. Lanark Fuel Co.*, 65 S.E. 200, 65 W.Va. 726, 29 L.R.A.N.S. 487.

W.Va. 1904. "Negligence" is the doing of something which under the circumstances a reasonable person would not do, or the omission to do something, in the discharge of a legal duty, which under the circumstances a reasonable person would do, and which act of commission or omission, as a natural consequence directly following, produces damages to another.—*Williams v. Belmont Coal & Coke Co.*, 46 S.E. 802, 55 W.Va. 84.

Wis. 1985. "Negligence" is a want of ordinary care under the circumstances.—*Koback v. Crook*, 366 N.W.2d 857, 123 Wis.2d 259.—Neglig 232.

Wis. 1978. "Negligence" is determined to exist when there is a duty owed to a party's person or property and this duty is breached by conduct which is not intentional in nature.—*Fondell v. Lucky Stores, Inc.*, 270 N.W.2d 205, 85 Wis.2d 220.—Neglig 250.

Wis. 1976. "Negligence" consists of failing to use that degree of care which would be exercised by reasonable person under the circumstances.—*Cepilina v. South Milwaukee School Bd.*, 243 N.W.2d 183, 73 Wis.2d 338.—Neglig 233.

Wis. 1969. Conduct constitutes "negligence" if risk of harm involved is of such magnitude as to outweigh what the law regards as the utility of the act or the manner in which it was done.—*Young v. Anaconda Am. Brass Co.*, 168 N.W.2d 112, 43 Wis.2d 36.—Neglig 200.

Wis. 1966. For conduct resulting in harm to constitute "negligence" person of ordinary prudence must under circumstances reasonably foresee harm as probable; mere possibility of harm, however, is insufficient to establish negligence.—*Meihost v. Meihost*, 139 N.W.2d 116, 29 Wis.2d 537.—Neglig 213.

Wis. 1963. Word "negligence" as contained in statute relating to liability for damages caused by defects in public grounds implies either an overt act or a failure to perform a required duty. W.S.A.

81.17.—*Hei v. City of Durand*, 125 N.W.2d 341, 22 Wis.2d 101.—*Mun Corp* 851.

Wis. 1961. Conduct constitutes “negligence” if the risk of harm involved is of such magnitude as to outweigh what the law regards as the utility of the act or the manner in which it was done.—*Meyer v. Val-Lo-Will Farms, Inc.*, 111 N.W.2d 500, 14 Wis.2d 616.—*Neglig* 200.

Wis. 1961. “Negligence” depends on circumstances and is relative term, and certainly so in relation to risk involved and knowledge thereof, and the greater the danger is, the greater care is required.—*Brodde v. Grosenick*, 111 N.W.2d 165, 14 Wis.2d 341.—*Neglig* 200.

Wis. 1961. Word “negligence” as used in comparative negligence statute means causal negligence. W.S.A. 331.045.—*Kohler v. Dumke*, 108 N.W.2d 581, 13 Wis.2d 211.—*Neglig* 549(6).

Wis. 1961. Failure to prevent harm which could have been reasonably foreseen as probable by person of ordinary prudence under like circumstances constitutes “negligence.”—*Mondl v. F.W. Woolworth Co.*, 107 N.W.2d 472, 12 Wis.2d 571.—*Neglig* 213.

Wis. 1954. “Negligence” in law consists in the omission or inadvertently wrongful exercise of a duty, which omission or exercise is the legal cause of damage to another.—*Brady v. Chicago & N.W.R. Co.*, 62 N.W.2d 415, 265 Wis. 618.—*Neglig* 202.

Wis. 1954. A “nuisance” rests on the degree of danger arising even with exercise of utmost care and to constitute a nuisance the wrongfulness must be in the acts themselves rather than in failure to use the requisite degree of care in doing them, which presents a question of “negligence.”—*Bell v. Gray-Robinson Const. Co.*, 62 N.W.2d 390, 265 Wis. 652.—*Neglig* 1172; *Nuis* 1.

Wis. 1954. “Nuisance” consists in violation of an absolute duty, whereas “negligence” consists in failure to use the degree of care required in the particular circumstances or violation of a relative duty.—*Bell v. Gray-Robinson Const. Co.*, 62 N.W.2d 390, 265 Wis. 652.—*Neglig* 250; *Nuis* 1.

Wis. 1954. Cause of action against construction company for loss of mink as a result of noisy operation of defendant’s power shovel without a muffler alongside highway near mink ranch during whelping season after rancher had notified operator of shovel of imminent danger to mink was based upon “negligence” rather than “nuisance.”—*Bell v. Gray-Robinson Const. Co.*, 62 N.W.2d 390, 265 Wis. 652.—*Anim* 44; *Nuis* 3(3).

Wis. 1953. The word “negligence” contemplates existence of duty by one person to another, a violation of that duty, and an injury resulting from that violation.—*Wright v. St. Mary’s Hospital of Franciscan Sisters, Racine*, 61 N.W.2d 900, 265 Wis. 502.—*Neglig* 202.

Wis. 1949. “Negligence” is any conduct, except conduct recklessly disregarding of an interest of others, which falls below standard established by

law for protection of others against unreasonable risk of harm, and care which actor is required to exercise to avoid being negligent in doing of an act, is that which he, as a reasonable man, should recognize as necessary to prevent the act from creating an unreasonable risk of harm to another.—*Welch v. Corrigan*, 38 N.W.2d 148, 255 Wis. 58.—*Neglig* 233.

Wis. 1945. “Negligence” is an act which actor as a reasonable man should realize as involving an unreasonable risk of causing an invasion of an interest of another.—*Jones v. Pittsburgh Plate Glass Co.*, 17 N.W.2d 562, 246 Wis. 462.—*Neglig* 233.

Wis. 1942. The stopping of automobiles on highway for not more than two minutes while two guests alighted therefrom did not constitute “parking”, as defined by statute, so as to constitute a violation of statute prohibiting the parking of a vehicle upon highway outside a business or residence district when it is practical to park it off the roadway, even though the automobile could have been parked off the traveled roadway on a graveled driveway, and hence such stopping did not constitute “negligence” rendering driver and her insurer liable for injuries to guests when parked automobile was struck by another automobile. St.1939, §§ 85.10(30), 85.19(1).—*Gast v. Dallmann*, 2 N.W.2d 716, 240 Wis. 103.—*Autos* 173(4), 181(1).

Wis. 1940. Under statute governing municipal public works, contracts, and bids, and providing that bidder cannot recover forfeited deposit on ground of mistake in bid without proof that he was free from “carelessness, negligence, or inexcusable neglect,” the quoted terms are synonymous as applied to mere omissions to do some act, and hence neglect, carelessness, or negligence does not create forfeiture if excusable, as the statute contemplates neglect may be. St.1937, § 66.29 (5, 7). “Carelessness” and “negligence” consist of the doing of some act or omitting to do some act.—*Krasin v. Village of Almond*, 290 N.W. 152, 233 Wis. 513, 126 A.L.R. 832.

Wis. 1936. Before there can be “negligence,” there must be breach of duty owing by person against whom claim of negligence is made but, at common law, every person is required to use ordinary care not to injure another.—*Hoeverman v. Feldman*, 265 N.W. 580, 220 Wis. 557.—*Neglig* 250.

Wis. 1936. “Negligence” exists when one has violated a duty which he owes to another, whether character of act be positive or negative.—*Hoeverman v. Feldman*, 265 N.W. 580, 220 Wis. 557.—*Neglig* 250.

Wis. 1932. In statute making unjustifiable killing of persons by gross negligence fourth degree manslaughter, scope of term “negligence” is confined to killing by “gross negligence.” St.1929, § 340.26.—*State v. Whatley*, 245 N.W. 93, 210 Wis. 157, 99 A.L.R. 749.—*Homic* 661(4).

Wis. 1929. Basis of carrier’s liability for delayed transportation is “negligence.”—*Stephens v. Chica-*

go & N.W. Ry. Co., 227 N.W. 875, 200 Wis. 181.—Carr 98.

Wis. 1928. Slight want of ordinary care in automobile collision case constitutes "negligence."—Gherke v. Cochran, 222 N.W. 304, 198 Wis. 34, rehearing denied 223 N.W. 425, 198 Wis. 34.—Autos 171(8), 208.

Wis. 1919. "Negligence" is a failure to exercise that degree of care that the mass of mankind usually exercised in a like or similar situation.—Griebenow v. Chicago & M.E. Ry. Co., 171 N.W. 664, 169 Wis. 12.

Wis. 1914. In section 1494-58, Stats. (W.S.A. 26.21) (which authorizes recovery of double damages in actions for fires set by locomotive engines, if the fires occurred through "wilfulness, malice or negligence"), the word "negligence" is qualified or modified by the associated words and means such negligence as carries with it an element of wilfulness or malice, in other words, gross negligence.—Bonnell v. Chicago, St. P., M. & O. Ry. Co., 147 N.W. 1046, 158 Wis. 153.—R R 483.

Wis. 1910. Since the term "negligence" has been construed to mean "want of ordinary care," it would have been the better practice had the trial court used the latter term instead of the former word in his submission of questions to the jury, under Laws 1907, c. 254, providing that in an action for injuries against a railroad company the judge should submit to the jury the questions, first, as to whether the company, or any officer, other than the person injured, was guilty of negligence and second, if that question is answered in the affirmative, whether the person injured was guilty of negligence, etc.—Jensen v. Wisconsin Cent. Ry. Co., 128 N.W. 982, 145 Wis. 326.—Trial 352.15.

Wis. 1910. Use of the term "want of ordinary care," rather than "negligence" would have been the better practice in submitting questions to the jury, under Laws 1907, c. 254.—Jensen v. Wisconsin Cent. Ry. Co., 128 N.W. 982, 145 Wis. 326.—Emp Liab 277.

Wis. 1910. There are three degrees of "negligence": First, slight negligence involving an absence of that degree of care and vigilance which persons of extraordinary prudence and foresight are accustomed to use; second, ordinary negligence, involving failure to exercise in any given situation such care as the great mass of mankind ordinarily exercise under the same or similar circumstances; and, third, gross negligence involving a failure to exercise any care to avoid inflicting injury to the person or property of others, recklessly or wantonly acting or failing to act to avoid such injury, evincing such utter disregard of consequences as to suggest a willingness, substantially equivalent to intent, to injure and denominated such constructively, and classable with actual intent as regards duty to compensate for the injury.—Astin v. Chicago, M. & St. P.R. Co., 128 N.W. 265, 143 Wis. 477, 31 L.R.A.N.S. 158.

Wis. 1910. Want of ordinary care is "negligence," but want of extraordinary care, or that care

which is customarily exercised by extraordinarily careful people, is "slight negligence," and the latter does not affect the rights of parties injured.—Hackett v. Wisconsin Cent. Ry. Co., 124 N.W. 1018, 141 Wis. 464.—Neglig 232.

Wis. 1909. "Negligence" in law is careless conduct under such circumstances that an ordinarily prudent person would anticipate some injury to another as a reasonably probable result thereof.—Johanson v. Webster Mfg. Co., 120 N.W. 832, 139 Wis. 181.

Wis. 1908. "Negligence" is a want of the care ordinarily exercised by the great mass of persons under like circumstances.—Badekow v. Chicago, B. & Q. Ry. Co., 117 N.W. 812, 136 Wis. 341.

Wis. 1904. The term "negligence" suggests only inadvertence or want of ordinary care, and, however great may be the degree of such want of care, so long as inadvertence remains, willfulness is excluded.—Rideout v. Winnebago Traction Co., 101 N.W. 672, 123 Wis. 297, 69 L.R.A. 601.—Neglig 275.

Wis.App. 1997. To prevail on "negligence" claim, plaintiff must show facts which could prove all of following: (1) duty on part of defendant; (2) breach of that duty; (3) causal connection between conduct and injury; and (4) actual loss or damage as result of injury.—Smith v. Dodgeville Mut. Ins. Co., 568 N.W.2d 31, 212 Wis.2d 226, review denied 576 N.W.2d 281, 215 Wis.2d 425.—Neglig 202.

Wis.App. 1994. "Negligence" is failure to exercise ordinary care, and includes act or failure to act under circumstances in which reasonable person would foresee that such action or failure to act will subject property of another to unreasonable risk of injury or damage.—Nischke v. Farmers & Merchants Bank & Trust, 522 N.W.2d 542, 187 Wis.2d 96, review and cross review denied, review denied 527 N.W.2d 335.—Neglig 232.

Wis.App. 1984. "Negligence" consists of failing to use degree of care that would be exercised by a reasonable person under the circumstances.—La Chance v. Thermogas Co. of Lena, 357 N.W.2d 1, 120 Wis.2d 569.—Neglig 233.

Wyo. 1991. "Negligence" is failure to act as reasonable, prudent person would act in same or similar circumstances.—Coleman v. Strohmman, 821 P.2d 88.—Neglig 233.

Wyo. 1991. Legislature did not intend by replacing word "negligence" with word "fault" in allocation and apportionment statute to allow statute to reach warranty and strict liability proceedings; topic of bill by title in general text was, before amendment, and remained thereafter related to negligence actions, and "negligence" is synonym for "fault." W.S.1977, § 1-1-109.—Phillips v. Duro-Last Roofing, Inc., 806 P.2d 834.—Neglig 549(6); Sales 425.

Wyo. 1983. "Negligence" is failure to exercise ordinary care, ordinary care being that degree of care which reasonable person is expected to exercise under same or similar circumstances.—Cervelli v. Graves, 661 P.2d 1032.—Neglig 232.

Wyo. 1979. Not reading a contract before signing is "negligence."—*Laird v. Laird*, 597 P.2d 463.—Contracts 93(2).

Wyo. 1978. "Negligence" is the failure to observe for the protection of the interests of another person that degree of care, precaution and vigilance which the circumstances demand, whereby such other person suffers injury.—*Nehring v. Russell*, 582 P.2d 67.—Neglig 230.

Wyo. 1975. Driving an automobile on highway at night at such speed that it cannot be stopped within distance that objects can be seen ahead of it constitutes "negligence."—*Gilliland v. Rhoads*, 539 P.2d 1221.—Autos 168(8).

Wyo. 1940. "Gross negligence" within Automobile Guest Act is something less than willful, wanton, and reckless conduct, which renders person injuring another liable to injured person notwithstanding his contributory negligence, falls short of being such reckless disregard of probable consequences as is equivalent to wilful and intentional wrong, and differs from ordinary "negligence" in degree of inattention and in kind from willful and intentional conduct which is or should be known to have tendency to injure. W.C.S.1945, § 60-1201.—*Mitchell v. Walters*, 100 P.2d 102, 55 Wyo. 317.—Autos 181(1).

NEGLECTANCE ACTIONS

N.H. 1964. Actions by patients against physicians for improper care or treatment are "malpractice actions"; however, actions by patients against hospitals for improper care or treatment are "negligence actions" and not malpractice actions.—*Blas-tos v. Elliot Community Hospital*, 200 A.2d 854, 105 N.H. 391.—Health 600, 800.

Ohio App. 3 Dist. 1939. Actions for "willful misconduct" are often treated as "negligence actions", but an action based upon "willful or wanton misconduct" is different from an action for "negligent conduct" and the difference is one of kind, not merely of degree, since "negligence" does not have for its base either wilfulness or wantonness, and misconduct which is merely negligent is never either willful or wanton.—*Murphy v. Snyder*, 27 N.E.2d 152, 63 Ohio App. 423, 17 O.O. 163, 29 Ohio Law Abs. 59.—Neglig 275.

NEGLECTANCE AND CARELESSNESS

C.A.6 (Ky.) 1973. Under Kentucky law, allegation of "negligence and carelessness," with no stipulation regarding degree of negligence, includes an allegation of both ordinary and gross negligence.—*McTavish v. Chesapeake & O. R. Co.*, 485 F.2d 510.—Neglig 1516.

NEGLECTANCE ARISING FROM THE OPERATION OF SUCH VEHICLE

Ga.App. 1997. For purposes of statute providing that county's purchase of liability insurance for bodily injury or death caused by use of motor vehicle waives sovereign immunity only to extent that insurance is purchased to provide coverage for negligence of, inter alia, servant or employee, in-

mate's running over coil of barbed wire while operating insured tractor with bush hog came within meaning of "negligence arising from the operation of such vehicle." O.C.G.A. § 33-24-51(b).—*Simmons v. Coweta County*, 494 S.E.2d 362, 229 Ga. App. 550, certiorari denied, and certiorari granted, reversed in part 507 S.E.2d 440, 269 Ga. 694, on remand 508 S.E.2d 732, 235 Ga.App. 327, reconsideration denied, opinion vac in part 508 S.E.2d 732, 235 Ga.App. 327, reconsideration denied, and reconsideration denied.—Autos 187(3).

NEGLECTANCE AS A MATTER OF LAW

Tex.App.—Corpus Christi 1985. Unexcused violation of statute constitutes "negligence as a matter of law" if statute violated was designed to prevent injury to class of persons to which injured party belongs.—*Castro v. Hernandez-Davila*, 694 S.W.2d 575.—Neglig 259.

Wash. 1943. Generally, violation of a statute or county or municipal ordinance directly causing injury to another constitutes "negligence as a matter of law."—*Richey & Gilbert Co. v. Northwestern Natural Gas Corp.*, 134 P.2d 444, 16 Wash.2d 631.

NEGLECTANCE AS MATTER OF LAW

Hawai'i App. 1983. "Negligence as matter of law," also known as "negligence per se," occurs where act or omission is contrary to statutory duty, or is so opposed to dictates of common prudence that it can be said without hesitation or doubt that no careful person would have committed it.—*Blou-dell v. Wailuku Sugar Co.*, 669 P.2d 163, 4 Haw. App. 498.—Neglig 1704.

NEGLECTANCE CONSISTING OF WILLFUL AND WANTON DISREGARD OF GUEST'S RIGHTS

Colo. 1935. Evidence that motorist was traveling 45 miles an hour on slippery pavement in snowstorm, and slowed down temporarily when requested by guest, held insufficient as matter of law to show "negligence consisting of willful and wanton disregard of guest's rights" within statute. Laws 1931, p. 460, § 1.—*Millington v. Hiedloff*, 45 P.2d 937, 96 Colo. 581.

NEGLECTANCE COUNT

Ill.App. 2 Dist. 1942. The pleading of plaintiff's due care in count of complaint otherwise sufficiently charging willful and wanton conduct is mere "surplusage" and does not change such count into mere "negligence count."—*Reell, for Use of Has-kin v. Central Illinois Elec. & Gas Co.*, 45 N.E.2d 500, 317 Ill.App. 106.

NEGLECTANCE DIRECTLY CONTRIBUTING TO THE INJURY

Wis. 1909. In Laws 1907, p. 495, c. 254, making a railroad liable for injuries to employees caused in whole or in the greater part by the negligence of other employees, and requiring the court to submit to the jury whether the railroad or the person injured was guilty of "negligence directly contributing to the injury," the quoted words are used to

convey the idea of negligence proximately contributing to the injury.—*Zeratsky v. Chicago, M. & St. P. Ry. Co.*, 123 N.W. 904, 141 Wis. 423.—*Emp Liab* 157.

NEGLIGENCE IMPUTABLE TO EMPLOYER

S.D.N.Y. 1952. Where shipowner was not aware of any propensity of seaman to assault fellow employees, either at the time of hiring or at any other time prior to assault on fellow employee, and risk of assault on fellow employee created by hiring or retaining seaman was not of sufficient magnitude to cause ordinary man of reasonable prudence to investigate seaman's propensities, hiring of seaman without investigation was not such "negligence imputable to employer" as would afford ground for recovery under Jones Act for injuries inflicted by seaman in unprovoked assault upon fellow employee. *Jones Act*, 46 U.S.C.A. 688.—*Jones v. Lykes Bros S S Co*, 108 F.Supp. 323, reversed 204 F.2d 815, certiorari denied 74 S.Ct. 72, 346 U.S. 857, 98 L.Ed. 370, rehearing denied 74 S.Ct. 217, 346 U.S. 905, 98 L.Ed. 404, and 75 S.Ct. 447, 348 U.S. 960, 99 L.Ed. 749.—*Seamen* 29(3).

NEGLIGENCE IN FACT

Ill.App. 4 Dist. 1902. The alleged negligence of a railroad company in using a defective and unsafe engine the boiler of which exploded and injured plaintiff, is "common law negligence" as distinguished from "statutory negligence," "negligence in fact" as distinguished from "negligence in law" and does not constitute negligence per se.—*Illinois Cent. R. Co. v. Behrens*, 101 Ill.App. 33.—*Neglig* 259.

NEGLIGENCE IN ITS PROSECUTION

N.M. 1990. Dismissal of suit for failure to prosecute was a dismissal for "negligence in its prosecution," within exception to statute generally extending statute of limitations when new suit was commenced within six months of dismissal of prior suit. *NMSA 1978*, § 37-1-14.—*Gathman-Matotan Architects and Planners, Inc. v. State, Dept. of Finance and Admin., Property Control Div.*, 787 P.2d 411, 109 N.M. 492.—*Lim of Act* 130(5).

NEGLIGENCE IN LAW

Del.Super. 1937. One who violates provisions of statute enacted for safety of others is guilty of "negligence in law" or "negligence per se."—*Lynch v. Lynch*, 195 A. 799, 39 Del. 1, 9 W.W.Harr. 1.—*Neglig* 259.

Ill.App. 4 Dist. 1902. The alleged negligence of a railroad company in using a defective and unsafe engine the boiler of which exploded and injured plaintiff, is "common law negligence" as distinguished from "statutory negligence," "negligence in fact" as distinguished from "negligence in law" and does not constitute negligence per se.—*Illinois Cent. R. Co. v. Behrens*, 101 Ill.App. 33.—*Neglig* 259.

Iowa 1936. "Actionable negligence" or "negligence in law" grows out of nonobservance of a duty

prescribed by law.—*Kingery v. Donnell*, 268 N.W. 617, 222 Iowa 241.—*Neglig* 250.

NEGLIGENCE IN OPERATION

N.Y. 1949. "Negligence in operation" within statute making owner of motor vehicle liable for "negligence in operation" of vehicle by any person legally using the vehicle is not limited in meaning to manner in which a car is driven, but includes the act of putting a defective truck into operation on the highway. *Vehicle and Traffic Law*, § 59.—*Elfeld v. Burkham Auto Renting Co.*, 87 N.E.2d 285, 299 N.Y. 336, 13 A.L.R.2d 370.—*Autos* 192(2).

NEGLIGENCE IN PROSECUTION

Iowa App. 1998. Former employee's incorrect approximation of number of former employer's employees in federal action for sex discrimination was not "negligence in prosecution" of federal claim, as was required for employer to be entitled to relief under statute which deems second action filed within six months after dismissal of first action to be continuation of first action for limitations purposes. *I.C.A.* § 614.10.—*Wetter v. Dubuque Aerie No. 568 of the Fraternal Order of Eagles*, 588 N.W.2d 130.—*Lim of Act* 130(6).

NEGLIGENCE IN THE CARE AND CUSTODY OF THE CARGO

E.D.Mich. 1940. Where cargo of wheat was damaged when $\frac{3}{4}$ inch water line through cargo hold broke, as result of freezing, and permitted water to drain into cargo, and where only means by which $\frac{3}{4}$ inch line could have been shut off was to close valve on main line in engine room which would have deprived entire forward crew of water, and if water had been shut off to keep water line from freezing, the purpose would have been to prevent water from running into the cargo through the break, the failure to shut off the line was not "negligence in the management of the ship" but "negligence in the care and custody of the cargo", so that vessel owner was not entitled to exemption from liability. *Carriage of Goods by Sea Act* § 4(2)(a), 46 U.S.C.A. § 1304(2)(a).—*Spencer Kellogg & Sons v. Great Lakes Transit Corp.*, 32 F.Supp. 520.—*Ship* 138.

NEGLIGENCE IN THE MANAGEMENT OF THE SHIP

E.D.Mich. 1940. Under the Harter Act, one of the tests used in determining whether an act constitutes "negligence in the management of the ship" for which owner of ship is exempt from liability is the purpose for which the act was done or left undone. *Harter Act*, 46 U.S.C.A. §§ 190-195.—*Spencer Kellogg & Sons v. Great Lakes Transit Corp.*, 32 F.Supp. 520.—*Ship* 136.

E.D.Mich. 1940. Where cargo of wheat was damaged when $\frac{3}{4}$ inch water line through cargo hold broke, as result of freezing, and permitted water to drain into cargo, and where only means by which $\frac{3}{4}$ inch line could have been shut off was to close valve on main line in engine room which would have deprived entire forward crew of water,

and if water had been shut off to keep water line from freezing, the purpose would have been to prevent water from running into the cargo through the break, the failure to shut off the line was not "negligence in the management of the ship" but "negligence in the care and custody of the cargo", so that vessel owner was not entitled to exemption from liability. Carriage of Goods by Sea Act § 4(2)(a), 46 U.S.C.A. § 1304(2)(a).—*Spencer Kellogg & Sons v. Great Lakes Transit Corp.*, 32 F.Supp. 520.—Ship 138.

NEGLIGENCE IN THE THIRD DEGREE

Md. 1916. "Negligence in the third degree" presupposes that the employees of the defendant knew, or by due care could have known, of the peril in which the injured person had, by his own negligence, placed himself on the track, in time to avert the injury.—*State v. New York, P. & N.R. Co.*, 96 A. 809, 127 Md. 651.—R R 338.2.

NEGLIGENCE IN THE USE OR OPERATION

N.Y.A.D. 2 Dept. 1991. Injury sustained by vehicle passenger when he was stabbed by passenger in van that had collided with vehicle and that was subsequently pursued and forced to stop by vehicle's driver did not arise out of "negligence in the use or operation" of motor vehicle within meaning of Vehicle and Traffic Law. *McKinney's Vehicle and Traffic Law* § 388.—*Olin v. Moore*, 577 N.Y.S.2d 446, 178 A.D.2d 517.—Autos 192(1).

NEGLIGENCE IN TREATMENT

Wis.App. 1997. "Negligence in treatment," as that term is used in statute authorizing State Medical Examining Board to take action with respect to license holder found guilty of negligence in treatment, has same meaning as civil standard for medical negligence, under which physician is required to conform to accepted standard of reasonable care, but is not liable for failing to exercise extraordinary degree of care. W.S.A. 448.02(3).—*Department of Regulation & Licensing v. State Medical Examining Bd.*, 572 N.W.2d 508, 215 Wis.2d 188.—Health 205.

NEGLIGENCE OF A MARINER

S.D.Ill. 1971. Failure of deckhand to take any action to stop flow of water into engine room of vessel through hull opening, lines, hose and pump of her port bilge discharge system, after deckhand discovered that vessel was taking water through such system or parts thereof, constituted "negligence of a mariner" which was insured against under the Inchmaree Clause of hull policy, and owner of vessel which sank was entitled to recover for all loss and damage to the vessel under such clause because of such negligence.—*Carter Tug Service, Inc. v. Home Ins. Co.*, 345 F.Supp. 1193.—Insurance 2231.

NEGLIGENCE OF MASTERS, MARINERS OR PILOTS

S.D.Ill. 1971. Captain of vessel which sank made an error in judgment in failing to beach vessel after danger or risk of her sinking actually became

apparent to him, and such error in judgment constituted "negligence of masters, mariners or pilots," which was insured against under the Inchmaree Clause of hull policy, and owner of vessel was entitled to recover for all loss and damage to the vessel under such clause because of such negligence.—*Carter Tug Service, Inc. v. Home Ins. Co.*, 345 F.Supp. 1193.—Insurance 2231.

S.D.Ill. 1971. Failure of captain of vessel to take any action to stop flow of water into engine room of vessel through the hull opening, line, hose and pump of her port bilge discharge system, after he was informed by deckhand that vessel was taking water through such system or parts thereof, constituted "negligence of masters, mariners or pilots," which was insured against under the Inchmaree Clause of hull policy, and owner of vessel was entitled to recover for all loss and damage to the vessel under such clause because of such negligence.—*Carter Tug Service, Inc. v. Home Ins. Co.*, 345 F.Supp. 1193.—Insurance 2231.

NEGLIGENCE OF THE BUYER

La.App. 2 Cir. 2001. Assignee's failure to record the assignment of a judgment did not constitute "negligence of the buyer," so as to preclude a claim in warranty based on the assignor's subsequent release of the judicial mortgage on the judgment debtor's property. LSA-C.C. art. 2500.—*Sanson Four Rentals, L.L.C. v. Faulk*, 803 So.2d 1048, 35,417 (La.App. 2 Cir. 12/19/01).—Judgm 849.

NEGLIGENCE OR CULPABLE CONDUCT

C.A.1 (Mass.) 1994. Breach of warranty, according to Massachusetts law, constitutes "negligence or culpable conduct," for purposes of federal rule that prohibits evidence of subsequent remedial measures to prove negligence or culpable conduct in connection with event. Fed.Rules Evid.Rule 407, 28 U.S.C.A.—*Cameron v. Otto Bock Orthopedic Industry, Inc.*, 43 F.3d 14.—Evid 219.25(1).

NEGLIGENCE OR INTENTIONAL MISCONDUCT

La. 1975. Statute which provides that "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it" contemplates responsibility founded on fault, namely, "negligence or intentional misconduct" including abuse of rights; notion of "fault" in this context is conduct which violates the standard of reasonableness in the community, an act that a careful and prudent person would not undertake. LSA-C.C. art. 2315.—*Hero Lands Co. v. Texaco, Inc.*, 310 So.2d 93.—Neglig 233, 259.

NEGLIGENCE OR OTHER CAUSES

Ga.App. 1975. Phrase "negligence or other causes" in indemnity agreement providing that Ports Authority would hold railway common carrier harmless from all claims resulting from negligence or other causes and arising out of railroad's use of Authority's tracks except for claims arising from carrier's sole negligence included any wrongful or negligent acts of the Authority imposing liability

upon carrier so that carrier was entitled to indemnification for payments made under the Federal Employers' Liability Act to switchman injured while working adjacent to Authority's tracks due to negligence of both carrier and Authority. Federal Employer's Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.—Georgia Ports Authority v. Central of Georgia Ry. Co., 219 S.E.2d 467, 135 Ga.App. 859.—Indem 33(7).

NEGLIGENCE OR TORTS

Conn. 1938. A wrong consisting in making false and fraudulent representations comes within words "negligence or torts" within rule that a charitable institution is not responsible for injuries sustained through negligence or torts of its managers, agents, and servants.—Boardman v. Burlingame, 197 A. 761, 123 Conn. 646.—Char 45(2).

NEGLIGENCE PER SE

C.A.4 (Md.) 1960. Under Maryland law, the violation of a penal statute is merely "evidence of negligence" and a question for the jury, but is not "negligence per se", the distinction between the quoted phrases being that in the former there must be an adjudication as to whether the violation constitutes negligence, while in the latter negligence necessarily follows the proof of a violation.—New Amsterdam Cas. Co. v. Novick Transfer Co., 274 F.2d 916.—Neglig 259.

C.A.9 (Wash.) 1974. Under theory of "absolute liability," recovery may be had without proof of negligence, while under theory of "negligence per se" arising from violation of statute, defendant may explain the violation and present an excuse in order to show that the violation occurred without negligence, and may show that the violation was due to some cause beyond defendant's control.—U.S. v. Burlington Northern, Inc., 500 F.2d 637.—Neglig 259; Torts 1.

C.C.A.8 (Minn.) 1942. The legislative intent of Congress is to treat a violation of Safety Appliance Act as "negligence per se". Safety Appliance Act § 2, and Federal Employers' Liability Act § 1, 45 U.S.C.A. §§ 2 and 51.—Chicago, St. P., M. & O. Ry. Co. v. Muldowney, 130 F.2d 971, certiorari denied 63 S.Ct. 526, 317 U.S. 700, 87 L.Ed. 560.—Emp Liab 191.

C.C.A.9 (Mont.) 1939. Under Montana law, where duty of city to keep sidewalks in reasonably safe condition is delegated to owners or occupants of adjoining premises, failure of owners or occupants to observe requirements of ordinance does not constitute "negligence per se."—Western Auto Supply Agency of Los Angeles v. Phelan, 104 F.2d 85.—Mun Corp 808(7).

C.C.A.6 (Ohio) 1940. Violation of the Ohio statute requiring that train give signals at crossings is "negligence per se." Gen.Code, § 8853.—Baltimore & O.R. Co. v. Joseph, 112 F.2d 518, 18 O.O. 151, certiorari denied 61 S.Ct. 551, 312 U.S. 682, 85 L.Ed. 1121, rehearing denied 61 S.Ct. 710, 312 U.S. 714, 85 L.Ed. 1144.—R R 313.

D.Conn. 2000. Under doctrine of "negligence per se," elements of duty and breach in negligence action are satisfied by proof that defendant has violated relevant statute or regulation and that party injured is party whom statute or regulation was intended to protect.—Martin v. Shell Oil Co., 198 F.R.D. 580.—Neglig 222, 259.

D.Kan. 1994. Under Kansas law, "negligence per se" is term of art which refers to violation of specific requirement of a law or an ordinance; difference between negligence and "negligence per se" is that former must be found by fact finder, while fact finder's inquiry on latter issue is limited to determination whether violation occurred.—Rollo v. City of Kansas City, Kan., 857 F.Supp. 1441.—Neglig 259.

D.Kan. 1993. Distinction between "negligence" and "negligence per se" is means and method of ascertainment; negligence must be found by jury by evidence, while negligence per se results from violation of specific law or ordinance.—H. Wayne Palmer & Associates v. Helder Industries, Inc., 839 F.Supp. 770.—Neglig 200, 259, 1683.

N.D.Miss. 1974. The doctrine of "negligence per se" holds that even though a statute may not expressly provide civil liabilities for its violation, if a breach occurs in the proper circumstances, courts may give added emphasis to the legislative policies which prompted passage of the statute by declaring that one who violates its provisions is per se negligent, without need for showing that the putative tort-feasor maintained an actual lack of reasonable care; the statute is itself deemed a conclusive expression of the applicable standard of reasonable conduct.—Otto v. Specialties, Inc., 386 F.Supp. 1240.—Neglig 238.

D.N.J. 1949. Under New Jersey law, the violation of a penal statute or ordinance is not "negligence per se", but is a mere incident of negligence and may be considered in determining whether there was negligence conclusively shown.—Siciliano v. U S, 85 F.Supp. 726.—Neglig 259.

W.D.Okla. 1996. To establish "negligence per se" under Oklahoma law on basis of statutory violation, plaintiff must establish that (1) injury was caused by the violation; (2) injury was a type intended to be prevented by statute; and (3) injured party was member of class which statute was intended to protect.—Gaines-Tabb v. ICI Explosives USA, Inc., 995 F.Supp. 1304, affirmed 160 F.3d 613.—Neglig 259.

M.D.Pa. 1942. Under Pennsylvania law it is not "negligence per se" for a vehicle to be driven on left side of road, but it is duty of driver of vehicle approaching from opposite direction to keep to the right. 75 P.S.Pa. § 521.—Palmer v. Moren, 44 F.Supp. 704.—Autos 170(2), 245(13).

E.D.Tenn. 1951. That pedestrian was in a hurry rushing about, and did not keep her eyes focused on sidewalk, did not make out a case of "negligence per se" barring recovery for injuries sustained in fall on defective sidewalk.—Blaine v. U.S., 102 F.Supp. 161.—Mun Corp 806(1).

Ala.App. 1940. Where alleged servant of defendant was driving defendant's automobile with defective brakes over a public street at the time of collision with plaintiff in violation of the statute providing that every motor vehicle when operated upon a highway shall be equipped with adequate brakes, driving of automobile in such condition was "negligence per se". Code 1928, § 1397(88).—William E. Harden, Inc. v. Harden, 197 So. 94, 29 Ala.App. 411.—Autos 148.

Alaska 1999. The "negligence per se" doctrine provides that a person who indisputably violates a statute must be found negligent.—Ardinger v. Hummell, 982 P.2d 727, appeal after new trial Crosby v. Hummell, 63 P.3d 1022.—Neglig 259.

Alaska 1976. If a positive and definite standard of care has been established by legislative enactment whereby a jury may determine whether there has been a violation thereof by finding a single issue of fact, a violation is "negligence per se"; but where the jury must determine the negligence or lack of negligence of a party charged with the violation of a rule of conduct fixed by legislative enactments from a consideration and evaluation of multiple facts and circumstances by the process of applying, as the standard of care, the conduct of a reasonable prudent person, "negligence per se" is not involved.—McLinn v. Kodiak Elec. Ass'n, Inc., 546 P.2d 1305.—Neglig 259.

Ariz. 1962. Violation of statute or ordinance requiring particular thing to be done or not done is "negligence per se."—Caldwell v. Tremper, 367 P.2d 266, 90 Ariz. 241.—Neglig 259.

Ariz. 1947. One is not guilty of "negligence per se" merely because he operates vehicle at a speed greater than was reasonable and prudent, having due regard to traffic, surface and width of highway, and other conditions. Code 1939, § 66-101.—Butane Corp. v. Kirby, 187 P.2d 325, 66 Ariz. 272.—Autos 245(40.1).

Ariz. 1947. Violation of either specific or general statutory speed regulations is not "negligence per se." Code 1939, § 66-101.—Butane Corp. v. Kirby, 187 P.2d 325, 66 Ariz. 272.—Autos 245(40.1).

Ariz. 1941. The violation of an ordinance or statute forbidding a party to do a certain act is "negligence per se".—Cobb v. Salt River Valley Water Users' Ass'n, 114 P.2d 904, 57 Ariz. 451.—Neglig 259.

Ariz. 1941. Where abutting property owner permitted waste water mixed with silt and dirt to flow across sidewalk in violation of ordinance forbidding persons from permitting water to go onto any sidewalk, violation of the ordinance was "negligence per se".—Cobb v. Salt River Valley Water Users' Ass'n, 114 P.2d 904, 57 Ariz. 451.—Mun Corp 808(7).

Ariz.App. 1968. A person who violates a statute enacted for the protection and safety, of the public is guilty of "negligence per se."—Christy v. Baker, 439 P.2d 517, 7 Ariz.App. 354.—Neglig 259.

Ark. 1942. It is not "negligence per se" to overtake and pass another automobile.—Lowe v. Ivy, 164 S.W.2d 429, 204 Ark. 623.—Autos 172(3).

Ark. 1941. Driving on bridge with truck and equipment which weighed in excess of maximum load provided in warning notice placed on bridge by highway engineer was "negligence per se" for which owner and driver would be liable for actual damage resulting to bridge. Pope's Dig. §§ 6799(c), 6809(a).—Arkansas State Highway Commission v. Mode, 157 S.W.2d 53, 203 Ark. 179.—Bridges 27.

Cal. 1939. The violation of an ordinance or statute is "negligence per se."—Wright v. Los Angeles Ry. Corp., 93 P.2d 135, 14 Cal.2d 168.—Neglig 259.

Cal. 1918. Violation of speed limit fixed by city ordinance is "negligence per se."—Opitz v. Schenck, 174 P. 40, 178 Cal. 636.—Mun Corp 705(4).

Cal.App. 1 Dist. 1997. Under doctrine of "negligence per se," negligence is presumed if plaintiff establishes that (1) defendant violated statute or regulation, (2) violation caused plaintiff's injury, (3) injury resulted from kind of occurrence statute or regulation was designed to prevent, and (4) plaintiff was one of class of persons statute or regulation was intended to protect; first two elements are normally questions for trier of fact, while last two elements are determined by trial court as matter of law. West's Ann.Cal.Evid.Code § 669.—Daum v. SpineCare Medical Group, Inc., 61 Cal.Rptr.2d 260, 52 Cal.App.4th 1285, review denied.—Neglig 1591, 1704.

Cal.App. 1 Dist. 1985. Act in violation of statute, without justification, that proximately causes plaintiff's injury, constitutes "negligence per se." West's Ann.Cal.Evid.Code § 669.—Goodwin v. Reilley, 221 Cal.Rptr. 374, 176 Cal.App.3d 86.—Neglig 259, 409.

Cal.App. 1 Dist. 1944. Where the standard of conduct of a reasonable man is expressly defined by legislative enactment or judicial decision, the failure to conform with that standard is "negligence per se", otherwise the standard is that of a reasonable man under the circumstances.—Lotta v. City of Oakland, 154 P.2d 25, 67 Cal.App.2d 411.—Neglig 233, 259.

Cal.App. 1 Dist. 1943. Before a violation of a statute can be "negligence per se" so as to impose liability, it must be shown that the violation was a proximate cause of the injury.—Wohlenberg v. Malcewicz, 133 P.2d 12, 56 Cal.App.2d 508.—Neglig 409.

Cal.App. 1 Dist. 1942. The towing of one vehicle by means of another is not "negligence per se", but the towing must be done with due consideration for the safety of others.—Weddle v. Loges, 125 P.2d 914, 52 Cal.App.2d 115.—Autos 174(1).

Cal.App. 1 Dist. 1942. Maintenance of sidewalk elevator door with total variation of seven-sixteenths of an inch from being absolutely flush with surface of sidewalk did not violate San Francisco

ordinance requiring sidewalk elevator doors to be as nearly "flush" with the upper surface of the sidewalk as will permit proper drainage so as to charge owner of premises with "negligence per se" for injuries sustained by pedestrian in fall while walking over elevator door.—*Clarke v. Foster's, Inc.*, 125 P.2d 60, 51 Cal.App.2d 411.—*Mun Corp* 821(17).

Cal.App. 1 Dist. 1937. Railroad track on which trains are constantly running is itself a warning to any passenger who has reached years of discretion, and who is possessed of ordinary intelligence, that it is not safe to walk on track or near enough to be struck by passing train without exercise of constant vigilance, and failure of such person to exercise such care and watchfulness and to make use of all his senses to avoid danger incident to such situation is "negligence per se."—*McKeown v. Northwestern Pac. R. Co.*, 66 P.2d 1250, 20 Cal.App.2d 324.—*Carr* 323.

Cal.App. 2 Dist. 2002. "Negligence per se," which is a presumption of duty and breach based on a defendant's statutory violation, requires a showing that plaintiff's injuries resulted from the very acts the statute was designed to prevent.—*Lopez v. Baca*, 120 Cal.Rptr.2d 281, 98 Cal.App.4th 1008, as modified.—*Neglig* 259, 1591.

Cal.App. 2 Dist. 1986. Under the doctrine of "negligence per se," violation of statute without justification constitutes presumptive failure to exercise due care only if violation proximately caused injury and person injured was one of the class of persons for whose benefit statute was adopted. *West's Ann.Cal.Evid.Code* § 669.—*Fredette v. City of Long Beach*, 231 Cal.Rptr. 598, 187 Cal.App.3d 122.—*Neglig* 259, 409.

Cal.App. 2 Dist. 1950. Driving of loaded tractor truck and semi-trailer, weighing 25,000 pounds or more, at a speed greater than 40 miles per hour is "negligence per se". *West's Ann.Vehicle Code*, § 22406.—*Fortier Transp. Co. v. Union Packing Co.*, 216 P.2d 470, 96 Cal.App.2d 748.—*Autos* 168(2).

Cal.App. 2 Dist. 1942. "Negligence per se" can only be predicated on a violation of a local ordinance when accident is proximately contributed to by such violation.—*Eigner v. Race*, 129 P.2d 444, 54 Cal.App.2d 506.—*Neglig* 409.

Cal.App. 2 Dist. 1942. Bus driver entering intersection with arterial highway without making the boulevard stop required by city ordinance was guilty of "negligence per se".—*Spinner v. Los Angeles Ry. Corp.*, 126 P.2d 940, 52 Cal.App.2d 679.—*Carr* 295.2.

Cal.App. 2 Dist. 1942. Where motorist making a left turn at an intersection on a green light struck pedestrian who was also crossing on green in crosswalk, motorist's failure to yield right of way to pedestrian constituted "negligence per se". *Vehicle Code*, § 560, *St.1935*, p. 188, *West's Ann.Vehicle Code*, §§ 21950, 21951.—*Barr v. Mountjoy*, 122 P.2d 676, 50 Cal.App.2d 40.—*Autos* 160(4).

Cal.App. 3 Dist. 1960. Where standard of conduct of reasonable man is expressly defined by legislative enactment or judicial decision, failure to conform to such standard is "negligence per se", but where standard of obligatory conduct is not fixed by legislative enactment, standard is that of a reasonable man under the circumstances.—*Law v. Shoate*, 3 Cal.Rptr. 274, 178 Cal.App.2d 739.—*Neglig* 259.

Cal.App. 3 Dist. 1942. A truck driver who parked truck on highway, near place where highway was blocked by slide, was not guilty of "negligence per se" because he failed to place flares on highway as required by statute when a truck is disabled, but he might nevertheless be guilty of lack of ordinary care in failing to do so. *Vehicle Code*, § 590, *St.1937*, p. 620, *West's Ann.Vehicle Code*, § 25300.—*Callison v. Dondero*, 124 P.2d 852, 51 Cal.App.2d 403.—*Autos* 173(7), 245(17).

Cal.App. 3 Dist. 1942. Generally, fact that pedestrians are proceeding along shoulder of highway in same direction traffic is traveling, in opposition to *Vehicle Code*, establishes "negligence per se". *West's Ann.Vehicle Code*, § 21956.—*Escobar v. McNiel*, 124 P.2d 70, 51 Cal.App.2d 122.—*Autos* 218.

Cal.App. 3 Dist. 1941. A violation of the Federal Safety Appliance Act constitutes "negligence per se" under the Federal Employers' Liability Act. *Federal Employers' Liability Act*, § 1 et seq., 45 U.S.C.A. § 1 et seq.; *Federal Safety Appliance Act* § 1 et seq., 45 U.S.C.A. § 1 et seq.—*Maurice v. State*, 110 P.2d 706, 43 Cal.App.2d 270.—*Emp Liab* 45.

Cal.App. 3 Dist. 1940. A speed of 35 miles an hour, even in a rainstorm, is not necessarily "negligence per se".—*Ohran v. Yolo County*, 104 P.2d 700, 40 Cal.App.2d 298.—*Autos* 308(11).

Cal.App. 3 Dist. 1939. Failure to see an unlighted object within the range of one's headlights is not "negligence per se," but question is one for jury.—*Harper v. Northwestern Pac. R. Co.*, 93 P.2d 821, 34 Cal.App.2d 451.—*R R* 350(16.1).

Cal.App. 3 Dist. 1939. An electric company's failure to remove permanently abandoned telephone wire from its power line poles as required by order of railroad commission was a violation of law, and hence was "negligence per se" so as to render company liable for death of boy who was electrocuted when he touched telephone wire. *St.1911*, *Ex.Sess.*, p. 59, § 73.—*Langazo v. San Joaquin Light & Power Corp.*, 90 P.2d 825, 32 Cal.App.2d 678.—*Electricity* 16(1).

Cal.App. 3 Dist. 1939. A pedestrian's action in crossing highway diagonally and at point where there is no designated crosswalk is not "negligence per se" in absence of rule of statute or ordinance prohibiting "jay walking."—*Brannock v. Bromley*, 86 P.2d 1062, 30 Cal.App.2d 516.—*Autos* 217(7).

Cal.App. 4 Dist. 1948. An act or failure to act below a statutory standard is "negligence per se", and when evidence establishes that a violation thereof proximately caused injury, and no excuse or

justification of a violation of such statute is shown, responsibility may be fixed on the violator.—*Wilkerson v. Brown*, 190 P.2d 958, 84 Cal.App.2d 401.—Neglig 259, 409.

Cal.App. 4 Dist. 1943. Generally, violation of a statute is “negligence per se”.—*Fietz v. Hubbard*, 138 P.2d 315, 59 Cal.App.2d 124.—Neglig 259.

Cal.App. 4 Dist. 1943. Although it is not “negligence per se” to have a waxed floor in an office, the floor may be so waxed as to make it slippery and dangerous.—*Henderson v. Progressive Optical System*, 134 P.2d 807, 57 Cal.App.2d 180.—Neglig 1104(8).

Cal.App. 4 Dist. 1942. A breach of positive statutory duty of operator of disabled vehicle, stopped on highway at night, to see that flares, placed to rear of vehicle, remain illuminated during hours of darkness, is “negligence per se”, which may support judgment for one injured in collision with such vehicle, if such negligence was proximate cause of collision and injured party was free from contributory negligence. Vehicle Code, § 590, St.1937, p. 620, West’s Ann.Vehicle Code, § 24803.—*Anderson v. Pacific Tank Lines*, 126 P.2d 153, 52 Cal.App.2d 244.—Autos 173(5).

Cal.App. 4 Dist. 1940. In motorist’s action for injuries sustained when motorist was struck by defendants’ truck while motorist was getting out of his automobile after parking it near edge of paved three-lane highway outside of a business or residence district when automobile stopped on a foggy morning, District Court of Appeal could not assume that stopping on oiled shoulder came within purview of statutes governing stopping of automobiles on highway and was “negligence per se” where there was no evidence disclosing whether oiled shoulder was ordinarily used for vehicular travel. Vehicle Code, §§ 81, 525, as amended by St.1937, pp. 617, 619, and §§ 526, 582, 584, St.1935, pp. 181, 190, 191.—*Ketchum v. Pattee*, 98 P.2d 1051, 37 Cal.App.2d 122.—App & E 909(1).

Colo. 2002. In contrast to negligence, “negligence per se” occurs when the defendant violates a statute adopted for the public’s safety and the violation proximately causes the plaintiff’s injury.—*Scott v. Matlack, Inc.*, 39 P.3d 1160, as modified.—Neglig 259, 409.

Colo.App. 1998. “Negligence per se” is simply negligence with the standard of care being set forth in a statute or ordinance.—*Wallman v. Kelley*, 976 P.2d 330, as modified on denial of rehearing, and certiorari denied.—Neglig 238.

Colo.App. 1994. “Negligence per se” exists when statute is violated and statute was designed to protect the class of people of which the injured party is a member from the type of injury which occurred.—*Jacque By and Through Dyer v. Public Service Co. of Colorado*, 890 P.2d 138, rehearing denied, and certiorari denied.—Neglig 259.

Colo.App. 1989. “Negligence per se” serves to establish existence of defendant’s breach of legally cognizable duty owed to plaintiff.—*Pyles-Knutzen*

v. Board of County Com’rs of County of Pitkin, 781 P.2d 164.—Neglig 259.

Conn. 1938. The skidding of an automobile is not “negligence per se”, but only when due to the legal fault of driver.—*Baum v. Atkinson*, 3 A.2d 305, 125 Conn. 72.—Autos 168(1).

Conn. 1918. Intoxication is not “negligence per se.”—*Griffin v. Wood*, 105 A. 354, 93 Conn. 99.—Neglig 535(14).

Del.Super. 1978. Fact that driver of southbound pickup truck, which collided with westbound fire truck as such truck, while responding to fire alarm, attempted to cross southbound lanes after passing through northbound lanes and median strip while traffic light was red, had failed to yield right-of-way to fire truck was “negligence per se.” 21 Del.C. § 4134.—*Green v. Millsboro Fire Co., Inc.*, 385 A.2d 1135, affirmed in part, reversed in part 403 A.2d 286.—Autos 208.

Del.Super. 1937. One who violates provisions of statute enacted for safety of others is guilty of “negligence in law” or “negligence per se.”—*Lynch v. Lynch*, 195 A. 799, 39 Del. 1, 9 W.W.Harr. 1.—Neglig 259.

Fla. 1943. The parking of a truck on a curve on a traveled highway at night with lights shining and no flares out, is “negligence per se.”—*Steele v. Independent Fish Co.*, 13 So.2d 14, 152 Fla. 739.—Autos 173(4), 173(5).

Fla.App. 2 Dist. 2001. Law recognizes two different types of “negligence per se”: the first involves statutes that impose strict liability upon violators, usually in those circumstances where the statute is designed to protect a particular class of persons from their inability to protect themselves, and the second type of negligence per se results from the violation of a statute that seeks to protect a particular class of persons from a particular injury by establishing the duty to take precautions to avoid that injury.—*Golden Shoreline Ltd. Partnership v. McGowan*, 787 So.2d 109.—Neglig 259.

Fla.App. 3 Dist. 1978. Violation of statute providing that every public lodging establishment shall be properly plumbed, lighted, heated, cooled, and ventilated, and shall be conducted in every department with strict regard to health, comfort, and safety of guests is not “negligence per se.” West’s F.S.A. § 509.221(2).—*Schulte v. Gold*, 360 So.2d 428, certiorari denied 368 So.2d 1367.—Inn 10.10.

Fla.App. 3 Dist. 1976. Violation of the municipal fire code which adopted county fire prevention and safety code, which code was clearly designed to protect particular class of persons from a particular type of injury and which code was penal in nature, would be “negligence per se” rather than “prima facie” evidence of negligence needing independent proof of element of proximate causation.—*Concord Florida, Inc. v. Lewin*, 341 So.2d 242, certiorari denied 348 So.2d 946.—Neglig 259, 409.

Ga. 1909. It has been declared that “the omission of specified acts of diligence prescribed by statute or by a valid municipal ordinance is ‘negli-

gence per se.” Generally a court cannot instruct a jury that certain acts constitute “negligence per se,” but there is an exception where a statute or municipal ordinance requires the performance of the act.—*Southern Ry. Co. v. Davis*, 65 S.E. 131, 132 Ga. 812.

Ga.App. 2002. “Negligence per se” is not liability per se; negligence is in itself only one of the essential elements prerequisite to a cause of action in a given case.—*Royal v. Ferrellgas, Inc.*, 563 S.E.2d 451, 254 Ga.App. 696, reconsideration denied, and certiorari denied.—*Neglig* 259.

Ga.App. 1962. While violation of city speed ordinance constitutes “negligence per se,” it does not constitute “gross negligence.”—*Tatum v. Pruitt*, 129 S.E.2d 388, 107 Ga.App. 172.—*Autos* 168(2).

Ga.App. 1950. Exceeding speed limit fixed for restricted school speed zone did not constitute “negligence per se” as to another motorist not on the way to or from school, since he was not a member of class for whose benefit speed limit was fixed pursuant to statute. Ga.Code Ann. § 68-301(c).—*Grant v. McKiernan*, 60 S.E.2d 794, 82 Ga.App. 82.—*Autos* 245(78).

Ga.App. 1948. A violation of statute requiring every motor vehicle while in use or operation upon streets or highways to be equipped with efficient serviceable brakes is “negligence per se.” Ga.Code Ann. § 68-302.—*Harper v. Hall*, 46 S.E.2d 201, 76 Ga.App. 441.—*Autos* 148.

Ga.App. 1941. The failure of a motorist while traveling along a highway at night to have provided his automobile with front lamps of character as required by statute is “negligence per se,” and while failure to dim such lights is “negligence” it is not “negligence per se,” as the requirement to dim is by inference and not mandate. Code, § 68-302.—*Whatley v. Henry*, 16 S.E.2d 214, 65 Ga.App. 668.—*Autos* 149.

Ga.App. 1941. When one motorist is meeting another it is his duty to sound his horn, or give other like warning, when traveling along a highway “not clear” or along a “descent or other dangerous place” on highway, as defined by statute, and a failure to comply with such requirement would be “negligence per se”. Code, § 68-303, subd. j; § 68-306.—*Whatley v. Henry*, 16 S.E.2d 214, 65 Ga.App. 668.—*Autos* 170(7).

Ga.App. 1941. The duty of keeping a constant and vigilant lookout ahead as a train approaches a public crossing within a municipality is specifically placed on engineer of the train and his failure to do so is “negligence per se”. Code, §§ 94-506, 94-507.—*Powell v. Jarrell*, 16 S.E.2d 198, 65 Ga. App. 453.—*R R* 313.

Ga.App. 1940. In action against railroad for death of plaintiff's husband resulting from railroad crossing accident, charge that it was not “negligence per se” for one not aware of approach of train to attempt to cross track without stopping, looking and listening, and that it was for jury to determine whether the husband was negligent if he failed to stop, look or listen before attempting to cross track,

was not erroneous.—*Atlanta, B. & C. R. Co. v. Thomas*, 12 S.E.2d 494, 64 Ga.App. 253.—*R R* 351(16).

Ga.App. 1940. Operation of automobile on highway at speed in excess of that permitted by law was “negligence per se”.—*Edwards v. Atlanta, B. & C. R. Co.*, 10 S.E.2d 449, 63 Ga.App. 212.—*R R* 350(13).

Ga.App. 1940. Proof in support of petition alleging injury from consumption of canned soup containing impure, tainted, poisonous, deleterious, and unwholesome matter, which was negligently permitted by manufacturer to become mixed with contents of the can, did not establish “negligence per se” as a breach of an alleged statutory duty. Code 1933, §§ 42-109, 42-115, 42-9901, 105-1101.—*H. J. Heinz Co. v. Fortson*, 8 S.E.2d 443, 62 Ga.App. 130.—*Food* 25.

Ga.App. 1940. Failure of an engineer to slow down his train and to have it under control at a public crossing may constitute negligence, but not “negligence per se”, although the statute does not especially require engineer as a matter of law to slow down train on approaching public crossing. Code 1933, § 94-506.—*Georgia Northern Ry. Co. v. Rollins*, 8 S.E.2d 114, 62 Ga.App. 138.—*R R* 316(4).

Ga.App. 1938. Although pure food law may give no right of action against dealer selling an adulterated article to a customer who is made ill, the sale of article in violation of statute constitutes “negligence per se”. Code 1933, §§ 42-109, 42-9901.—*Donaldson v. Great Atlantic & Pacific Tea Co.*, 200 S.E. 498, 59 Ga.App. 79.—*Food* 25.

Ga.App. 1937. Violation of valid rule of Public Service Commission regulating motor common carriers is “negligence per se,” where rule was passed for benefit of party complaining of its infraction and was proximate cause of his injury. Code 1933, § 68-601 et seq.—*Maner v. Dykes*, 190 S.E. 189, 55 Ga.App. 436.—*Autos* 201(1.1).

Ga.App. 1937. Failure to comply with statute requiring driver intending to start, stop, or turn, to extend hand is “negligence per se”. Code 1933, § 68-303, subd. f.—*Folds v. Auto Mut. Indem. Co.*, 189 S.E. 711, 55 Ga.App. 198.—*Autos* 169.

Ga.App. 1934. Violation of ordinance limiting speed to ten miles per hour at all crossings and “street intersections” held “negligence per se” as to pedestrian struck by motorist, notwithstanding intersection of street was with alley, and notwithstanding pedestrian did not cross exactly at intersection.—*Huckabee v. Grace*, 173 S.E. 744, 48 Ga. App. 621.—*Autos* 168(2).

Ga.App. 1934. Violation of statutory duty is not “negligence per se,” unless person injured thereby is within class for whose benefit statute was passed.—*Huckabee v. Grace*, 173 S.E. 744, 48 Ga. App. 621.—*Neglig* 259.

Ga.App. 1931. In case of “negligence per se,” law itself establishes negligence when certain act or

omission is proved.—*Lee v. Georgia Power Co.*, 161 S.E. 851, 44 Ga.App. 435.—Neglig 1575.

Hawai'i App. 1983. "Negligence as matter of law," also known as "negligence per se," occurs where act or omission is contrary to statutory duty, or is so opposed to dictates of common prudence that it can be said without hesitation or doubt that no careful person would have committed it.—*Blou-dell v. Wailuku Sugar Co.*, 669 P.2d 163, 4 Haw. App. 498.—Neglig 1704.

Idaho 2000. Customer's violation of statute prohibiting attempts without power company's permission to make connections with power lines for purposes of diverting power did not constitute "negligence per se," as alleged by company as affirmative defense in action to recover for injuries sustained by customer when electrical current coursed through his body as he metal rod to power line; statute was intended to prevent theft of electricity and damage to power company property, not to prevent type of harm that customer's act caused. I.C. § 18-4621.—*Orthman v. Idaho Power Co.*, 7 P.3d 207, 134 Idaho 598, rehearing denied.—Elec-tricity 18(1).

Idaho 1963. Violation of positive statutory inhibition constitutes "negligence per se" and not merely prima facie evidence of negligence.—*Bale v. Perryman*, 380 P.2d 501, 85 Idaho 435.—Neglig 259.

Idaho 1947. "Negligence per se" is a violation of a statutory duty or such negligence as appears so opposed to dictates of common prudence that court can say as matter of law, without hesitation that no careful prudent person would have committed it.—*Pittman v. Sather*, 188 P.2d 600, 68 Idaho 29.—Neglig 232, 259.

Idaho 1940. Failure to conform to the statute requiring bell to be rung or whistle to be sounded as train approaches crossing is "negligence per se". Code 1932, § 60-412.—*Hobbs v. Union Pac. R. Co.*, 108 P.2d 841, 62 Idaho 58.—R R 313.

Idaho 1938. Failure to comply with statute requiring a locomotive whistle or bell to be sounded from a distance of at least 80 rods from a crossing and kept sounding at intervals until the street, road, or highway is crossed, is "negligence per se." Code 1932, § 60-412.—*Allan v. Oregon Short Line R. Co.*, 90 P.2d 707, 60 Idaho 267.—R R 313.

Ill.App.1 Dist. 1942. The fact that pedestrian was in street attempting to cross busy street near middle of block and not at crosswalk when struck by backing automobile did not constitute "negli-gence per se", but was only "prima facie evidence" of negligence to be considered along with other facts and circumstances in evidence. S.H.A. ch. 95½, § 172.—*Hart v. City of Chicago*, 42 N.E.2d 887, 315 Ill.App. 214.—Autos 217(3).

Ill.App.1 Dist. 1942. The use of a defective sidewalk by one having knowledge of the defect is not "negligence per se", and, if while walking upon such sidewalk such person is injured in the exercise of ordinary care, he may recover from the city.—*Wandke v. City of Chicago*, 41 N.E.2d 339, 314 Ill.App. 381.—Mun Corp 821(23.1).

Ill.App.1 Dist. 1939. In absence of an ordi-nance, it is not "negligence per se" for a person to get on or off of a slowly moving street car, and question of contributory negligence in such case is one of fact for jury.—*Russell v. Richardson*, 24 N.E.2d 185, 302 Ill.App. 589.—Carr 333, 347.

Ill.App.2 Dist. 1948. Though speed is not "neg-ligence per se", since a railroad is required to use ordinary care to guard against injury to persons who may be rightfully traveling on public highways, speed may, under certain circumstances, become an act of negligence.—*Applegate v. Chicago & N. W. Ry. Co.*, 78 N.E.2d 793, 334 Ill.App. 141.—R R 316(1).

Ind. 1941. Violation of a statute requiring driver to keep vehicle on right of center of highway when meeting another vehicle ordinarily constitutes "negligence per se" and makes the violator liable for resulting damages. Laws 1925, c. 213, § 37 (*Burns' Ann.St.* § 47-514).—*Jones v. Cary*, 37 N.E.2d 944, 219 Ind. 268.—Autos 170(2).

Ind. 1941. A minor pedestrian walking on left edge of highway had right to assume that approach-ing motorist saw him, and it was not "negligence per se" for him to continue his course, on assumption that motorist would exercise ordinary care and avoid pedestrian, when there was no other traffic to prevent motorist from swerving to the left. *Burns' Ann.St.* § 47-513.—*Pfisterer v. Key*, 33 N.E.2d 330, 218 Ind. 521.—Autos 206, 245(74).

Ind. 1940. Truck owner's failure to comply with statutes requiring headlights of truck on highway in dark to be lighted, requiring truck to be equipped with two brilliant burning danger or caution signals, and requiring such signals to be displayed where truck was stalled on highway outside city at night, was "negligence per se". *Burns' Ann.St.* §§ 47-505, 47-525, 47-526.—*Winder & Son v. Blaine*, 29 N.E.2d 987, 218 Ind. 68.—Autos 173(5).

Ind.App. 1999. The unexcused or unjustified viola-tion of a duty proscribed by a statute or ordi-nance constitutes "negligence per se" if the statute or ordinance is intended to protect the class of persons in which the plaintiff is included and to protect against the risk of the type of harm which has occurred as a result of its violation.—*Plesha v. Edmonds ex rel. Edmonds*, 717 N.E.2d 981, rehear-ing denied, transfer denied 735 N.E.2d 235.—Neglig 259.

Ind.App.3 Dist. 1994. Unexcused or unjustified violation of duty prescribed by statute or ordinance constitutes "negligence per se" if statute or ordi-nance is intended to protect class of persons in which plaintiff is included and to protect against risk of type of harm which has occurred as result of its violation.—*Carroll v. Jobe*, 638 N.E.2d 467, re-hearing denied, and transfer denied.—Neglig 259.

Ind.App.4 Dist. 1993. Nonexcused or nonjusti-fied violation of duty dictated by statute is "negli-gence per se."—*Inland Steel v. Pequignot*, 608 N.E.2d 1378, transfer denied.—Neglig 259.

Ind.App. 1965. Generally, violation of duty pre-scribed by statute or ordinance is "negligence per

se" or as a matter of law, but there are exceptions where compliance with the statute or ordinance is impossible or noncompliance is excusable; under circumstances of impossibility or excusability, the violation is no more than prima facie evidence of negligence.—*Jenkins v. City of Fort Wayne*, 210 N.E.2d 390, 139 Ind.App. 1, rehearing denied 212 N.E.2d 916, 139 Ind.App. 1.—*Neglig* 259.

Ind.App. 1943. A violation of penal statutes constitutes "negligence per se", but to make such negligence actionable it must be a proximate cause of the injury for which action is brought.—*Rimco Realty & Investment Corp. v. La Vigne*, 50 N.E.2d 953, 114 Ind.App. 211.—*Neglig* 259, 409.

Ind.App. 1942. The operation of train at speed of 50 to 60 miles per hour in violation of city ordinance limiting speed to 25 miles an hour was "negligence per se".—*New York Cent. R. Co. v. Pinnell*, 40 N.E.2d 988, 112 Ind.App. 116.—*R R* 317.

Iowa 1996. Failure to comply with statutory duty is "negligence per se".—*Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611.—*Neglig* 259.

Kan. 1994. Distinction between "negligence" and "negligence per se" is the means and method of ascertainment; the former must be found by fact finder from the evidence while the latter results from violation of the specific requirement of a law or ordinance and the only fact for determination by fact finder is the commission or omission of the specific act inhibited or required.—*Kerns By and Through Kerns v. G.A.C., Inc.*, 875 P.2d 949, 255 Kan. 264.—*Neglig* 259, 1693.

Kan. 1992. The distinction between "negligence" and "negligence per se" is the means and method of ascertainment, the former must be found by the jury from the evidence while the latter results in the violation of the specific requirement of law or ordinance; the only fact for determination of the jury is the commission or omission of the specific act inhibited or required.—*Cerretti v. Flint Hills Rural Elec. Co-op. Ass'n*, 837 P.2d 330, 251 Kan. 347.—*Neglig* 259, 1693.

Kan. 1989. "Negligence" must be found by fact finder from the evidence, while "negligence per se" results from violation of specific requirement of law or ordinance, and only fact for determination of fact finder is commission or omission of specific act inhibited or required.—*Watkins v. Hartsock*, 783 P.2d 1293, 245 Kan. 756.—*Neglig* 259, 1693.

Kan. 1958. "Negligence per se" usually consists of violation of specific requirement of law or ordinance.—*Kendrick v. Atchison, T. & S. F. R. Co.*, 320 P.2d 1061, 182 Kan. 249.—*Neglig* 259.

Kan. 1958. The distinction between "negligence" and "negligence per se" is the means and method of ascertainment, in that the former must be found by jury from the evidence, while the latter results from violation of the specific requirement of law or ordinance, and the only fact for determination of the jury is the commission or omission of the specific act inhibited or required.—*Kendrick v.*

Atchison, T. & S. F. R. Co., 320 P.2d 1061, 182 Kan. 249.—*Neglig* 200, 259, 1683.

Ky. 1994. "Negligence per se" is merely negligence claim with statutory standard of care substituted for the common-law standard of care.—*Real Estate Marketing, Inc. v. Franz*, 885 S.W.2d 921.—*Neglig* 259.

Ky. 1948. A violation of the terms of a statute or ordinance is "negligence per se" but that negligence must have been the proximate cause of the injury in order to authorize recovery of compensation.—*Brown Hotel v. Levitt*, 209 S.W.2d 70, 306 Ky. 804.—*Neglig* 259, 409.

Ky. 1941. Failure of pedestrian to keep a continuous watch up and down street she was crossing to discover approaching vehicles was not "negligence per se".—*Layne v. Cottle*, 150 S.W.2d 684, 286 Ky. 221.—*Autos* 245(72).

Ky. 1940. Pedestrian's crossing street in middle of block in violation of city ordinance was "negligence per se," but such negligence would not bar her recovery for injuries sustained when struck by automobile unless it contributed to the accident.—*Murphy v. Homans*, 150 S.W.2d 14, 286 Ky. 191.—*Autos* 217(3), 226(2).

Ky. 1940. The violation of a statute or ordinance is "negligence per se", but such negligence will not entitle plaintiff to recover unless it was proximate cause of her injury.—*Murphy v. Homans*, 150 S.W.2d 14, 286 Ky. 191.—*Neglig* 259, 409.

Ky. 1914. Ordinarily it is not negligence per se for a passenger to alight from a moving train when it is going at such a low rate of speed that it is safe to so alight, but if it is moving at a speed that makes it probably unsafe to alight, it is "negligence per se" to do so.—*Hayden v. Chicago, M. & G.R. Co.*, 170 S.W. 200, 160 Ky. 836, L.R.A. 1915C, 181.

La.App. 1 Cir. 1953. The violation of law regulating highway traffic does not constitute "negligence per se", but to hold one who violates law responsible in damages it must appear that manner of violation was one of proximate causes of accident and resulting injury. LSA-R.S. 32:241.—*Mellow Joy Coffee Co. v. Continental Cas. Co.*, 63 So.2d 888.—*Autos* 147, 201(1.1).

La.App. 1 Cir. 1940. A violation of a law regulating highway traffic does not constitute "negligence per se" but to hold one who violates the law responsible in damages it must appear that manner of violation was proximate cause of accident and resulting injury.—*Bourgeois v. Longman*, 199 So. 142.—*Autos* 201(1.1), 245(25).

La.App. 2 Cir. 1997. Although violation of statute or ordinance constitutes "negligence per se," to be actionable the negligence must also be legal cause of the accident.—*Miller v. Keal*, 694 So.2d 569, 29,564 (La.App. 2 Cir. 5/7/97), rehearing denied, writ denied 703 So.2d 620, 1997-1751 (La. 10/13/97).—*Neglig* 409.

La.App. 2 Cir. 1996. Violation of a statute constitutes "negligence per se"; however, violation must also be a legal cause of accident causing

plaintiffs' injuries in order to be actionable.—*Baughman v. State, Dept. of Transp. and Development*, 674 So.2d 1063, 28,369 (La.App. 2 Cir. 5/8/96), rehearing denied, writ denied 681 So.2d 1260, 1996-1882 (La. 11/1/96).—Neglig 259, 409.

La.App. 2 Cir. 1964. "Negligence per se" is generally defined as the violation of a public duty enjoined by law for protection of person or property or as conduct, whether by commission or omission, which may be treated as negligence without proof of surrounding circumstances, because in violation of statutory law or palpably opposed to dictates of common prudence.—*Nelson v. Zurich Ins. Co.*, 165 So.2d 489, writ issued 167 So.2d 675, 246 La. 861, reversed in part 172 So.2d 70, 247 La. 438.—Neglig 259.

La.App. 2 Cir. 1946. The violation of a traffic law is "negligence per se" but it is not actionable unless it is the or a proximate cause of resulting injury.—*Crawley v. City of Monroe*, 26 So.2d 493.—Autos 147, 201(1.1).

La.App. 2 Cir. 1943. The placing of a pole carrying uninsulated high voltage wires on earth fill dam over which stock and pedestrians traveled at will, near overflow drain pipe, thereby weakening dam was "negligence per se".—*Scott v. Claiborne Elec. Co-op.*, 13 So.2d 524.—Electricity 16(1).

La.App. 2 Cir. 1942. The infraction of a traffic law constitutes "negligence per se".—*Woodruff v. Stewart*, 6 So.2d 796.—Autos 147.

La.App. 2 Cir. 1940. A mere skidding of an automobile upon highway is not "negligence per se" unless accompanied by other facts, but where skidding is result of improper driving, such as excessive speed on a slippery road known to driver, or inattention or improper control of automobile which causes automobile to skid, skidding is negligence.—*Harrelson v. McCook*, 198 So. 532.—Autos 168(1).

La.App. 2 Cir. 1940. A speed of 45 miles per hour on a paved highway is not always excessive under the law, nor is it "negligence per se".—*Donovan v. Standard Oil Co. of Louisiana*, 197 So. 320.—Autos 168(3).

La.App. 2 Cir. 1939. Violation of a safety law is "negligence per se." LSA-R.S. 45:561.—*Smith v. Texas & Pac. Ry. Co.*, 189 So. 316.—Neglig 259.

La.App. 2 Cir. 1939. Violation of a law is "negligence per se," but is not actionable unless it is proximate cause of injury or damage.—*Austin v. Baker-Lawhon & Ford*, 188 So. 416.—Neglig 259, 409.

La.App. 2 Cir. 1939. Violation of traffic ordinance or statute constitutes "negligence per se".—*Roberson v. Rodriguez*, 186 So. 853.—Autos 147.

La.App. 2 Cir. 1939. A motorist's violation of provisions of traffic regulatory statute or ordinance constitutes "negligence per se." Act No. 21 of 1932, § 3, rules 4(c)(2), 7(e).—*Fields v. Owens*, 186 So. 849.—Autos 147.

La.App. 2 Cir. 1938. Where truck was so heavily loaded it could not be stopped in less than 100 feet when being driven 25 miles per hour, and so loaded that it left only about six-foot clearance on a bridge, driving truck on bridge between 20 and 25 miles per hour in violation of statute was "negligence per se." Act No. 21 of 1932, § 9(a), par. 2.—*Jacobs v. Brooks*, 182 So. 349.—Autos 168(3).

La.App.Orleans 1942. It is not "negligence per se" for motorist to drive in center or on wrong side of road but it is negligence for one who is on the wrong side of road to fail to pull over to the right on meeting another vehicle.—*Hagaman v. Bankers Indem. Ins. Co.*, 7 So.2d 390.—Autos 170(1), 245(13).

La.App.Orleans 1937. Defendants whose barber pole was less than six feet above sidewalk at its lowest point, in violation of ordinance requiring signs or objects extending over sidewalk to be at least nine feet above sidewalk, were negligent, as respects their liability to plaintiff who allegedly bumped his head on pole, since violation of ordinance enacted in interest of citizens' safety is "negligence per se".—*Elfer v. Hibernia Nat. Bank in New Orleans*, 174 So. 287.—Mun Corp 779.

Md. 1953. For property owner who is altering a building to permit a pile of several hundred bricks only 2 feet in height, to be placed 2 feet from adjacent sidewalk does not constitute "negligence per se".—*Stottlemeyer v. Groh*, 94 A.2d 449, 201 Md. 414.—Mun Corp 808(1).

Md. 1943. Although speed in excess of the lawful limit may create a prima facie presumption of negligence, it is not "negligence per se".—*State, for Use of Parks, v. Insley*, 29 A.2d 904, 181 Md. 347.—Autos 245(40.1).

Mass. 1943. A penal statute designed to secure safety does not create a new standard of care so as to make violation of statute "negligence per se" upon which civil action for damages may be predicated.—*Greenway Wood Heel Co. v. John Shea Co.*, 46 N.E.2d 746, 313 Mass. 177.—Neglig 238.

Mass. 1943. Violation by landlord of statute requiring owner of building to procure written permit from head of fire department before disconnecting sprinkler system was not "negligence per se" and did not give rise to cause of action in favor of tenant for loss of goods which were destroyed by fire which occurred while sprinkler system which was installed in leased building was being repaired by landlord. G.L.(Ter.Ed.) c. 148, §§ 26, 27A as added by St.1932, c. 283.—*Greenway Wood Heel Co. v. John Shea Co.*, 46 N.E.2d 746, 313 Mass. 177.—Land & Ten 166(5), 169(11).

Mass. 1941. Under the law of Florida, the violation of traffic law is not "negligence per se" but a mere circumstance to be considered on question of negligence. Comp.Gen.Laws Fla.1927, §§ 1294, 1296, 1318.—*Stiles v. Wright*, 32 N.E.2d 220, 308 Mass. 326.—Autos 147.

Mass. 1940. A penal statute designed to secure safety does not create a new standard of care so as to make violation of statute "negligence per se"

upon which civil action for damages may be predicated.—*Richmond v. Warren Institution for Savings*, 30 N.E.2d 407, 307 Mass. 483, 132 A.L.R. 859.—*Neglig* 238.

Mich. 1947. Operating automobile with windshield so covered with frost that driver cannot see where he is on highway is “negligence per se”. *Comp.Laws* 1929, § 4734.—*Paquette v. Consumers Power Co.*, 25 N.W.2d 599, 316 Mich. 501.—*Autos* 168(9).

Mich. 1947. Light fall of snow and frosted condition of windshield, though making it difficult to distinguish between pavement and adjacent shoulder, did not render it impracticable to stop automobile on shoulder as required by statute when “practicable” and hence stopping automobile on pavement to clean frost from windshield was “negligence per se”. *Comp.Laws* 1929, § 4734; *Comp. Laws Supp.* 1940, § 4718.—*Paquette v. Consumers Power Co.*, 25 N.W.2d 599, 316 Mich. 501.—*Autos* 211.

Mich. 1942. Driving of automobile on street entirely devoted to industries or business places at speed of 25 miles per hour held not “negligence per se” barring recovery of damages for death of driver as result of collision with locomotive on track crossing street. *Pub.Acts* 1939, No. 318.—*Jones v. Grand Trunk Western R. Co.*, 5 N.W.2d 676, 303 Mich. 114.—*R R* 350(13).

Mich. 1942. Operation of a bus in business district at a rate of speed in excess of that permitted by statute in such district was “negligence per se”. *Comp.Laws* 1929, § 4697.—*Longfellow v. City of Detroit*, 5 N.W.2d 457, 302 Mich. 542.—*Carr* 295.2.

Mich. 1942. A violation of a statute prohibiting the operation of an automobile with any nontransparent material on the front windshield is “negligence per se”, but to preclude recovery for the death of a passenger caused by a collision with another automobile such negligence must be a contributing cause of the accident. *Comp.Laws* 1929, § 4734.—*Strong v. Kittenger*, 1 N.W.2d 479, 300 Mich. 126.—*Autos* 224(1), 226(2).

Mich. 1941. The simple act of starting a fire with kerosene and without pouring kerosene direct from can upon burning substance is not “negligence per se”.—*Peplinski v. Kleinke*, 299 N.W. 818, 299 Mich. 86.—*Explos* 9.

Mich. 1941. It is not “negligence per se” to have an oiled floor in a store, or to apply oil to a floor, if oil is applied in a proper manner, so that floor is not in a different condition from that usual with oiled floors.—*Hulett v. Great Atlantic & Pacific Tea Co.*, 299 N.W. 807, 299 Mich. 59.—*Neglig* 1708.

Mich. 1941. The driving of an automobile in city limits at a speed in excess of 30 miles an hour in violation of ordinance was “negligence per se”.—*Dedo v. Skinner*, 296 N.W. 265, 296 Mich. 299.—*Autos* 168(2).

Mich. 1941. Under statute requiring a motorist, upon passing railroad sign and going toward railroad crossing, to reduce speed so that vehicle shall not proceed faster than 10 miles per hour within 100 feet of nearest rail of crossing, a motorist who drives upon crossing at speed in excess of that allowed by the statute is guilty of “negligence per se”. *Comp.Laws* 1929, § 11405.—*Benaway v. Pere Marquette Ry. Co.*, 295 N.W. 536, 296 Mich. 1.—*R R* 327(11).

Mich. 1938. The violation of a statutory duty ordinarily constitutes “negligence per se.”—*Holmes v. Merson*, 280 N.W. 139, 285 Mich. 136.—*Neglig* 259.

Minn. 1981. “Negligence per se” is a form of ordinary negligence that results from violation of a statute.—*Seim v. Garavalia*, 306 N.W.2d 806.—*Neglig* 259.

Minn.App. 2001. “Negligence per se” is a form of ordinary negligence that results from violation of a statute and may exist when the reasonable-person standard is supplanted by a standard of care established by the legislature.—*Gradjelick v. Hance*, 627 N.W.2d 708, review granted, reversed 646 N.W.2d 225.—*Neglig* 238, 259.

Miss. 1941. The driving of automobile while under influence of intoxicating liquor is misdemeanor and hence “negligence per se”, but evidence thereof does not constitute prima facie case of manslaughter. *Code* 1930, § 1002; *Laws* 1938, c. 200, § 49.—*Cutshall v. State*, 4 So.2d 289, 191 Miss. 764.—*Autos* 332, 355(13).

Mo. 1949. Failure to pass to the right of center of intersection in making a left turn, in violation of statute, constituted “negligence per se”. *R.S.* 1939, § 8385(f) (V.A.M.S. § 304.020).—*Hamilton v. Patton Creamery Co.*, 222 S.W.2d 713, 359 Mo. 526.—*Autos* 169.

Mo. 1942. Failure of owner of building to comply with statutes requiring building to be equipped with fire escapes is “negligence per se”. *R.S.* 1939, §§ 14950–14955.—*Fassi v. Schuler*, 159 S.W.2d 774, 349 Mo. 160.—*Neglig* 1110(1).

Mo. 1936. Violation of any requirement of various federal safety appliance acts is “negligence per se,” which gives an employee injured thereby while engaged in interstate work right to recover under Federal Employers’ Liability Act. Federal Employers’ Liability Act, 45 U.S.C.A. §§ 51–59; Federal Safety Appliance Act 1910, § 2, 45 U.S.C.A. § 11.—*Giesecking v. Litchfield & M. Ry. Co.*, 94 S.W.2d 375, 339 Mo. 1.—*Emp Liab* 43.

Mo. 1936. Violation of any requirement of various federal safety appliance acts is “negligence per se,” which gives employee injured thereby while not engaged in interstate work right of recovery under common law as applied in state in which injury occurred. Federal Employers’ Liability Act, 45 U.S.C.A. §§ 51–59; Federal Safety Appliance Act 1910, § 2, 45 U.S.C.A. § 11.—*Giesecking v. Litchfield & M. Ry. Co.*, 94 S.W.2d 375, 339 Mo. 1.—*Emp Liab* 171.

Mo. 1928. Generally, violation of city ordinance regulating speed of automobiles is "negligence per se."—*Lewis v. St. Louis Independent Packing Co.*, 3 S.W.2d 244.

Mo.App. W.D. 1992. "Negligence per se" is negligence as matter of law; legislature pronounces in statute what conduct of reasonable person must be, whether or not common law would require similar conduct.—*Monteer v. Prospectors Lounge, Inc.*, 821 S.W.2d 898.—Neglig 238.

Mo.App. 1942. It was "negligence per se" for taxicab to proceed into safety zone in violation of ordinances and strike pedestrian standing in safety zone, irrespective of whether taxicab was making a U-turn or proceeding straight ahead.—*Svehla v. Taxi Owners Ass'n*, 157 S.W.2d 225.—Autos 160(1).

Mo.App. 1941. The failure of railway company employees to give the signals required by Illinois statute when train approaches a public crossing is "negligence per se". S.H.A.Ill. ch. 114, § 59.—*Busker v. New York Cent. R. Co.*, 149 S.W.2d 449.—R R 313.

Mo.App. 1940. Where plaintiff was injured when locomotive struck plaintiff's automobile at a grade crossing in Illinois, and under Illinois statute railroad was required to cause whistle or bell on locomotive to be kept ringing or whistling from a place at least 80 rods from where railroad intersected highway until highway was reached, although failure to ring bell or sound whistle on locomotive was "negligence per se" defendant was not liable for plaintiff's injuries unless such negligence directly caused or contributed to cause collision. S.H.A.Ill. ch. 114, § 59.—*Amos v. Terminal R. Ass'n of St. Louis*, 142 S.W.2d 787.—R R 337(5).

Mo.App. 1940. Violation of ordinance requiring street cars to stop immediately after clearing intersection, upon approach of any authorized emergency vehicle giving audible signal, was "negligence per se".—*Raymore v. Kansas City Public Service Co.*, 141 S.W.2d 103.—Urb R R 24.

Mo.App. 1940. The operation of a train at 60 miles per hour within city limits in violation of ordinance was "negligence per se".—*Dove v. Atchison, T. & S. F. Ry. Co.*, 140 S.W.2d 715.—R R 317.

Mo.App. 1940. Every intelligent adult is presumed to know that it is dangerous to be on any railroad track, and particularly on one where trains are operated at intervals of less than an hour apart and at speeds ranging to 60 miles per hour, and hence every adult, before entering danger zone of trains passing on tracks, is bound to be vigilant for his own safety and to look or listen for approaching trains and his failure to exercise such vigilance is "negligence per se" precluding recovery for his injury or death, although defendant was negligent.—*Dove v. Atchison, T. & S. F. Ry. Co.*, 140 S.W.2d 715.—R R 327(3), 335(4), 346(6).

Mo.App. 1940. The requirement that a motorist exercise the "highest degree of care" requires that he exercise the highest degree of care for his own safety as well as for the safety of others, and failure to exercise such degree of care is "negligence per

se." R.S.1939, § 8383 (V.A.M.S. § 304.010).—*Rohmann v. City of Richmond Heights*, 135 S.W.2d 378.—Autos 284.

Mo.App. 1939. Under statute, water company has duty to furnish safe water for consumption of the public and violation of the statutory requirement is "negligence per se." R.S.1929, § 5122, subd. 26, and § 5189 (V.A.M.S. §§ 386.020, 393.130).—*Martin v. Springfield City Water Co.*, 128 S.W.2d 674.—Waters 207.

Mo.App. 1937. In action by pedestrian struck while crossing street by commercial vehicle driven in excess of speed fixed by ordinance, violation of ordinance held "negligence per se."—*Gambell v. Irvine*, 102 S.W.2d 784.—Autos 168(6).

Mo.App. 1929. Employee did not assume risk of injury from falling of floor of building being wrecked because of custom of not inspecting building; "negligence per se."—*Killion v. King Lumber Co.*, 16 S.W.2d 730.—Emp Liab 124.

Mo.App. 1927. Violation of Motor Vehicle Act, § 19, Laws 1st Ex.Sess.1921, p. 91, requiring operation of motor vehicles in careful and prudent manner, is "negligence per se."—*Benzel v. Anishanzlin*, 297 S.W. 180.

Mo.App. 1927. Truck driver's violation of Laws 1921, Ex.Sess., pp. 91, 93, §§ 19, 21, regulating persons operating motor vehicles on highways, constitutes "negligence per se."—*Beck v. Wurst Coal & Hauling Co.*, 293 S.W. 449.

Mo.App. 1913. A provision in the mining laws of a state which requires that in shaft mines there shall be maintained the ordinary means of signaling to and from the top and bottom of the shaft imposes the duty on owners and operators of mines to install and use means of signaling equal in efficiency and safety to those in general use, and the use of a signal system less safe than those approved by general usage is "negligence per se."—*Miles v. Central Coal & Coke Co.*, 157 S.W. 867, 172 Mo.App. 229.

Mont. 1927. Truck driver's cutting corner in making left-hand turn at intersection constituted "negligence per se" (Rev.Codes 1921, § 1743).—*Marsh v. Ayers*, 260 P. 702, 80 Mont. 401.—Autos 171(12).

Neb. 1959. A violation of statutes regulating use and operation of automobiles upon highways is not "negligence per se" but is evidence of negligence which may be taken into consideration with all the other facts and circumstances in determining whether or not negligence is established thereby. R.R.S.1943, § 39-723.—*O'Neill v. Henke*, 94 N.W.2d 322, 167 Neb. 631.—Autos 147.

Neb. 1942. A failure to perform a mandatory duty enjoined by statute is "negligence per se" and if any person to whom the duty is owed, or for whose protection the statute is enacted, is injured in consequence of such violation, a case is made.—*Johnson v. Weborg*, 7 N.W.2d 65, 142 Neb. 516.—Neglig 259.

Neb. 1942. One who fails to perform his duty under statute providing that all scaffolds used in the erection, repairing, or alteration of any building shall be erected in a safe, suitable, and proper manner is guilty of "negligence per se". *Comp.St.* 1929, § 48-421.—*Johnson v. Weborg*, 7 N.W.2d 65, 142 Neb. 516.—*Neglig* 1204(6).

N.H. 1995. "Negligence per se" provides that where cause of action does exist at common law, standard of conduct to which defendant will be held may be defined as that required by statute, rather than usual reasonable person standard.—*Marquay v. Eno*, 662 A.2d 272, 139 N.H. 708.—*Neglig* 238.

N.J.Err. & App. 1944. Where jury was properly charged that violation of traffic laws did not constitute "negligence per se" but was a mere circumstance like all other circumstances to be considered in determining the issues of negligence and contributory negligence, court did not err in charging pertinent portions of traffic law at plaintiff's request. *N.J.S.A.* 39:4-32, 39:4-126.—*Middleton v. Public Service Coordinated Transport*, 36 A.2d 393, 131 N.J.L. 322.—*Trial* 241.

N.J.Err. & App. 1940. It is not "negligence per se" for motorist to drive in the second lane from the right on a four-lane highway.—*Claypoole v. Motor Finance Corp.*, 15 A.2d 794, 125 N.J.L. 440.—*Autos* 245(13), 245(79).

N.J.Err. & App. 1933. Violation of penal statute or ordinance is not "negligence per se" but a mere incident of negligence.—*Rizzolo v. Public Service Coordinated Transport*, 166 A. 456, 111 N.J.L. 107.—*Neglig* 259.

N.M. 1950. Light fall of snow and frosted condition of windshield, though making it difficult to distinguish between pavement and adjacent shoulder, did not render it impracticable to stop automobile on shoulder as required by statute when "practicable" and hence stopping automobile on pavement to clean frost from windshield was "negligence per se".—*Hisaw v. Hendrix*, 215 P.2d 598, 54 N.M. 119, 22 A.L.R.2d 285.

N.M. 1949. The operation of a motor vehicle in a manner that violates a statute enacted for protection of persons using highways is "negligence per se".—*Turrietta v. Wyche*, 212 P.2d 1041, 54 N.M. 5, 15 A.L.R.2d 407.—*Autos* 147.

N.M. 1949. Motorist's driving of automobile with his arm or elbow resting on top of lower portion of door is not "negligence per se" and whether it is negligence in a particular situation to do so is ordinarily a question for jury.—*Turrietta v. Wyche*, 212 P.2d 1041, 54 N.M. 5, 15 A.L.R.2d 407.—*Autos* 245(79).

N.M. 1940. Where driver stopped truck at night on oiled portion of highway without lights, or flares, when truck was not disabled and it was practical to park it off the main traveled portion of highway, driver's conduct was in violation of statute prohibiting leaving of vehicles standing on highways after dark without lights and constituted "negligence per se" and the proximate cause of death of motorist who collided with rear of truck. *Comp.St.* 1929,

§§ 11-823, 11-847; *Laws* 1935, c. 75.—*Duncan v. Madrid*, 101 P.2d 382, 44 N.M. 249.—*Autos* 173(5), 201(5).

N.M.App. 1984. Violation of a statute or ordinance enacted as a safety requirement for protection of human life or property, where violation is unexcused and proximately causes damages to another, constitutes "negligence per se." *UJI Civ.* 15.3, 15.4.—*McNeely v. Henry*, 676 P.2d 1359, 100 N.M. 794.—*Neglig* 259, 409.

N.Y. 1939. Violation of a statute, without other evidence, constitutes evidence of negligence and might constitute "negligence per se," and, if such violation is proximate cause of accident, liability is established.—*Homin v. Cleveland & Whitehill Co.*, 24 N.E.2d 136, 281 N.Y. 484.—*Neglig* 259, 409.

N.Y.A.D. 2 Dept. 1940. The purpose of statute concerning protection of persons engaged at window cleaning is to protect life and limb, and violation of the statute is "negligence per se". *Labor Law*, § 202, as amended by *Laws* 1937, c. 84, § 2.—*Lowenhar v. Commercial Outfitting Co.*, 21 N.Y.S.2d 112, 260 A.D. 211, appeal granted, reargument denied 22 N.Y.S.2d 927, 260 A.D. 809, affirmed 34 N.E.2d 376, 285 N.Y. 671.—*Neglig* 1103.

N.Y.A.D. 2 Dept. 1921. The failure to do or refrain from doing an act commanded or prohibited by a statute to promote public safety or the safety of the individual is "negligence per se".—*Kavanagh v. New York, O. & W. Ry. Co.*, 187 N.Y.S. 859, 196 A.D. 384, affirmed 135 N.E. 933, 233 N.Y. 597.—*Neglig* 259.

N.Y.Sup. 1941. Violation of Agriculture and Markets Law relating to sale of adulterated food is "negligence per se". *Agriculture and Markets Law*, §§ 199-a, 200.—*Catalanello v. Cudahy Packing Co.*, 27 N.Y.S.2d 637, affirmed 34 N.Y.S.2d 37, 264 A.D. 723, appeal denied 35 N.Y.S.2d 726, 264 A.D. 779.—*Food* 25.

N.Y.Sup. 1939. The mere setting of a fire for lawful purposes and under prudent circumstances is not "negligence per se".—*Automobile Ins. Co. of Hartford, Conn., v. Skogen*, 13 N.Y.S.2d 57, 171 Misc. 555.—*Neglig* 341.

N.Y.Mun.Ct. 1942. Automobile driver who, upon returning to parked automobile, opened left front door and entered, was not guilty of "negligence per se", barring recovery for damage done to parked automobile when passing automobile collided with partly opened door while driver was in the act of closing it, but a "question of fact" was presented as to whether driver under the circumstances was negligent.—*Pearlman v. Misner*, 36 N.Y.S.2d 646.—*Autos* 245(83).

N.Y.Ct.Cl. 1965. Mere proximity of parallel holes on golf course without protection of barriers between them does not constitute "negligence per se".—*Hornstein v. State*, 259 N.Y.S.2d 902, 46 Misc.2d 486, affirmed 294 N.Y.S.2d 320, 30 A.D.2d 1012.—*Theaters* 6(7.1).

N.C. 1962. Violation of reckless driving statute is "negligence per se." G.S. § 20-140.—Dunlap v. Lee, 126 S.E.2d 62, 257 N.C. 447, 96 A.L.R.2d 754.—Autos 158.

N.C. 1951. The violation of a statute or ordinance, intended and designed to prevent injury to persons or property, whether done intentionally or otherwise, is "negligence per se", and renders one civilly liable in damages, if its violation proximately results in injury to another, for, in such case, the statute or ordinance becomes the standard of conduct or rule of the prudent man.—State v. McLean, 67 S.E.2d 75, 234 N.C. 283.—Neglig 238, 259, 409.

N.C. 1942. The violation of statute providing that driver of automobile traveling downgrade must not coast with the gears in neutral, is "negligence per se", and such negligence, if injury to violator proximately results therefrom, will bar his right to recover therefor. Pub.Laws 1937, c. 407, § 127.—Dillon v. City of Winston-Salem, 20 S.E.2d 845, 221 N.C. 512.—Autos 204, 226(2).

N.C. 1942. A violation of any of statutory provisions relative to overtaking and passing other motor vehicles, following another vehicle at a reasonable distance and driving at a reasonable speed would be "negligence per se", and if injury proximately results therefrom, such negligence would be "actionable". Pub.Laws 1937, c. 407, §§ 103(a), 111(a), 114(a).—Tarrant v. Pepsi Cola Bottling Co., 20 S.E.2d 565, 221 N.C. 390.—Autos 168(5), 172(7), 172(8), 201(1.1), 201(2).

N.C. 1942. In action for injuries sustained by bicycle rider when struck by motor truck, an instruction that operation of motor truck at a greater rate of speed than was reasonable and prudent under the circumstances then existing would constitute "negligence per se" was proper. Pub.Laws 1937, c. 407, § 103(a).—Tarrant v. Pepsi Cola Bottling Co., 20 S.E.2d 565, 221 N.C. 390.—Autos 246(20).

N.C. 1942. The stopping of an automobile upon the paved or main traveled portion of a highway, outside of a business or residence district when it is practicable to park or leave the vehicle standing off the paved or main traveled portion of the highway for purpose of permitting a passenger to alight does not constitute violation of statute providing that no person shall "park" or "leave standing" any vehicle upon paved or main traveled portion of any highway when it is practicable to park or leave the vehicle standing off the paved or main traveled portion of highway, and does not constitute "negligence per se." Code 1939, § 2621(308).—Leary v. Norfolk Southern Bus Corp., 18 S.E.2d 426, 220 N.C. 745.—Autos 173(4), 245(17).

N.C. 1942. Violation of statute, requiring vehicle drivers to come to full stop before entering or crossing main traveled or through highways in obedience to stop signs erected by State Highway Commission, is not "negligence per se", but only evidence to be considered with other facts in determining whether violator was guilty of negligence. Pub.Laws 1937, c. 407, § 120(a).—Reeves v. Staley, 18 S.E.2d 239, 220 N.C. 573.—Autos 245(14).

N.C. 1941. In consolidated suits arising out of intersectional collision, evidence that plaintiff driver failed to obey stop sign did not establish that he was guilty of "negligence per se", notwithstanding that an ordinance of the town purported to make such failure a criminal offense, in view of applicable state law making failure to obey stop sign merely evidence to go to jury to be considered in light of surrounding circumstances. Code 1939, § 2621(305).—Swinson v. Nance, 15 S.E.2d 284, 219 N.C. 772.—Autos 245(80).

N.C. 1941. Violation of provisions of statute regulating speed of automobiles constitutes prima facie evidence of negligence, and violation of other provisions thereof constitutes "negligence per se". Pub.Laws 1937, c. 407, §§ 102, 103.—Kolman v. Silbert, 12 S.E.2d 915, 219 N.C. 134.—Autos 147, 168(2).

N.C. 1940. The violation of a statute enacted in interest of safety, imposing a rule of conduct in operation of a motor vehicle, constitutes "negligence per se," but before a recovery can be had for such negligence, there must be a showing of a causal connection between injury received and disregard of statutory mandate.—Bechtler v. Bracken, 11 S.E.2d 721, 218 N.C. 515.—Autos 147, 201(1.1).

N.C. 1940. A violation of either of statutes relating to duties of motorists in overtaking and passing as well as following vehicles proceeding in same direction constitutes "negligence per se" and if injury proximately results therefrom, it is actionable. Pub.Laws 1937, c. 407, §§ 112(c), 114(a).—Murray v. Atlantic Coast Line R. Co., 11 S.E.2d 326, 218 N.C. 392.—Autos 172(2).

N.C. 1940. The existence of defective condition in a street which causes an injury is not "negligence per se" and the "res ipsa loquitur doctrine" does not apply in actions against municipalities by reason of injuries to persons using the streets.—Gettys v. Town of Marion, 10 S.E.2d 799, 218 N.C. 266.—Mun Corp 817(2).

N.C. 1940. In action for injuries allegedly caused by negligent operation of defendants' taxicab, where exceeding speed limit prescribed in statute at time of injury complained of was not a substantive criminal offense but constituted merely prima facie evidence that speed was not reasonable and that it was unlawful, trial court's instruction that such statute was a criminal statute and violation of it constituted "negligence per se" was reversible error. Pub.Laws 1937, c. 407, § 103(b).—Smart v. Rodgers, 8 S.E.2d 833, 217 N.C. 560.—App & E 1064.1(3).

N.C. 1940. Although violation of statute imposing a rule of conduct for the operation of a motor vehicle and enacted in interest of safety constitutes "negligence per se" and becomes actionable upon proof of injury proximately resulting therefrom, such rule does not apply to an act which the statute denominates merely prima facie evidence of want of due care.—Smart v. Rodgers, 8 S.E.2d 833, 217 N.C. 560.—Autos 147, 201(1.1).

N.C. 1938. Operating an automobile at 40 miles per hour on a highway in open country is neither "negligence per se" nor "prima facie evidence of negligence."—*Smith v. Carolina Coach Co.*, 199 S.E. 90, 214 N.C. 314.—Autos 204.

N.C. 1933. Violation of statute or ordinance, intended and designed to prevent injury to persons or property, whether done intentionally or otherwise, constitutes "negligence per se."—*State v. Cope*, 167 S.E. 456, 204 N.C. 28.—Neglig 259.

N.C.App. 1996. Under "negligence per se" doctrine, a member of the class intended to be protected by a statute or regulation who suffers harm proximately caused by its violation has a claim against the violator.—*Spurlock v. Alexander*, 468 S.E.2d 499, 121 N.C.App. 668, review denied 473 S.E.2d 619, 343 N.C. 753.—Neglig 259, 409.

N.C.App. 1993. Violation of public safety statute is "negligence per se"; member of class protected by public safety statute has claim against anyone who violates such statute when violation is proximate cause of injury to claimant.—*Baldwin v. GTE South, Inc.*, 428 S.E.2d 857, 110 N.C.App. 54, certiorari denied 435 S.E.2d 331, 334 N.C. 619, reversed 439 S.E.2d 108, 335 N.C. 544.—Neglig 259, 409.

Ohio 1944. The statute providing for punishment of persons selling diseased, corrupted, adulterated, or unwholesome provisions without making their condition known to buyer was enacted for public protection, and sale of unwholesome or corrupted provisions in violation thereof is "negligence per se". Gen.Code, § 12760.—*Kurth v. Krumme*, 56 N.E.2d 227, 143 Ohio St. 638, 28 O.O. 517.—Food 25.

Ohio 1942. The violation by a motorist of an ordinance or state law requiring motorists to stop before crossing a main thoroughfare is ordinarily "negligence per se".—*Jenkins v. Sharp*, 42 N.E.2d 755, 140 Ohio St. 80, 23 O.O. 295.—Autos 171(11).

Ohio 1941. The violation of the statute providing that whoever sells, offers for sale, or has in his possession with intent to sell, diseased, corrupted, adulterated, or unwholesome provisions, without making the condition thereof known to the buyer, shall be fined not more than \$50 or imprisoned 20 days, or both, constitutes "negligence per se", and is the basis for recovery of damages by one suffering injury proximately resulting from a violation of the statute, if injured person is free from contributory negligence. Gen.Code, § 12760.—*Rubbo v. Hughes Provision Co.*, 34 N.E.2d 202, 138 Ohio St. 178, 20 O.O. 233.—Food 25.

Ohio 1939. A pedestrian's violation of city ordinance forbidding pedestrians to cross streets between intersections constituted "negligence per se."—*Smith v. Zone Cabs*, 21 N.E.2d 336, 135 Ohio St. 415, 14 O.O. 316.—Autos 217(3).

Ohio 1936. "Negligence per se" consists of the violation of a specific requirement of law or ordinance.—*Scott v. Hy-Grade Food Products Corp.*, 2 N.E.2d 608, 131 Ohio St. 225, 5 O.O. 566.

Ohio 1935. Distinction between "negligence" and "negligence per se" is the means and method of ascertainment, in that the former must be found by jury from evidence, while the latter results from violation of specific requirement of law or ordinance; only fact for determination of jury being commission or omission of specific act inhibited or required.—*Swoboda v. Brown*, 196 N.E. 274, 129 Ohio St. 512, 2 O.O. 516.—Neglig 1693, 1704.

Ohio 1916. The violation of a statute passed for the protection of the public is "negligence per se," and where such act of negligence by a defendant is the direct and proximate cause of an injury not directly contributed to by the injured person, the defendant is liable. The violation of a municipal ordinance passed in the proper exercise of the police power in the interest of the public safety, and not in conflict with general laws, is "negligence per se," and where such act of negligence by a defendant is the direct and proximate cause of an injury, not directly contributed to by the want of due care on the part of the injured person, the defendant is liable.—*Schell v. Du Bois*, 113 N.E. 664, 14 Ohio Law Rep. 45, 14 Ohio Law Rep. 132, 94 Ohio St. 93, L.R.A. 1917A, 710.

Ohio App. 1 Dist. 1951. Distinction between "negligence" and "negligence per se" is the means and method of ascertainment in that the former must be found by the jury from the conditions and circumstances disclosed by the evidence, while the latter results from violation of specific requirement of law or ordinance, the only fact for determination of jury being commission or omission of specific act inhibited or required.—*Meyer v. Cincinnati St. Ry. Co.*, 100 N.E.2d 437, 89 Ohio App. 169, 45 O.O. 429, 60 Ohio Law Abs. 38, affirmed 104 N.E.2d 173, 157 Ohio St. 38, 47 O.O. 34.—Neglig 1693, 1704.

Ohio App. 2 Dist. 1995. "Negligence per se" is violation of legislative enactment which imposes upon any person specific duty for protection of others where his neglect to perform that duty proximately results in injury to another.—*Monnin v. Fifth Third Bank of Miami Valley, N.A.*, 658 N.E.2d 1140, 103 Ohio App.3d 213, appeal not allowed 652 N.E.2d 801, 73 Ohio St.3d 1428.—Neglig 259, 409.

Ohio App. 3 Dist. 1942. The violation of a statute passed for the protection of the general public is "negligence per se", and, where such act of negligence by defendant is a direct and proximate cause of the injury not directly contributed to by the injured person, the defendant is liable.—*McKee v. New Idea*, 44 N.E.2d 697, 36 Ohio Law Abs. 563.—Neglig 259, 409.

Ohio App. 3 Dist. 1942. The violation of a statute prescribing a general rule of conduct for the protection of the public is not technically "negligence per se", but a violation of such general rule of conduct constitutes "negligence" in that it is a failure to exercise ordinary care.—*McKee v. New Idea*, 44 N.E.2d 697, 36 Ohio Law Abs. 563.—Neglig 259, 1704.

Ohio App. 3 Dist. 1942. Where action for death of molder allegedly resulting from silicosis due to unsafe conditions in plant was based upon statute prescribing general rules of conduct of employers for safety of employees, the violation of such statute did not technically constitute "negligence per se" and the court erred in charging the jury that it did, which error was rendered prejudicial by failure of court to explain the standard of conduct prescribed by the statute, which it was court's duty to do whether requested or not. Gen.Code, §§ 871-15, 871-16.—*McKee v. New Idea*, 44 N.E.2d 697, 36 Ohio Law Abs. 563.—App & E 1064.1(8); Emp Liab 223.1; Trial 194(16).

Ohio App. 3 Dist. 1940. A violation of the provisions of the statute that no vehicle shall stop on any road or highway, except with the front and rear right wheels within one foot of the righthand side of the improved portion of the road, nor in any such way as to obstruct a free passage of the road, is "negligence per se." Gen.Code, § 6310-27 (repealed 1941).—*Pugh v. Akron-Chicago Transp. Co.*, 28 N.E.2d 1015, 64 Ohio App. 479, 18 O.O. 211, 32 Ohio Law Abs. 159, affirmed 28 N.E.2d 501, 137 Ohio St. 164, 17 O.O. 511.—Autos 173(4).

Ohio App. 6 Dist. 1940. The violation of the statute providing that a vehicle joining the flow of traffic on a road or highway from a standing position, an alley, a building, or private property shall yield the right of way to all other vehicles, is "negligence per se." Gen.Code, § 6310-29 (repealed 1941. See § 6307-43).—*Bohn v. Deyo*, 35 N.E.2d 451, 66 Ohio App. 500, 20 O.O. 497.—Autos 167(3), 173(2), 204, 211.

Ohio App. 7 Dist. 1938. The statute requiring store proprietors to maintain a substantial "hand-rail" for stairs requires one handrail on one side of the stairway and failure to furnish one would be "negligence per se" if any injury is caused by such failure to the class protected by the statute, and the statute is intended to protect people from falling and is not intended only to give people needing it aid in going up or down stairs. Gen.Code, § 1006.—*Torok v. Stambaugh-Thompson Co.*, 43 N.E.2d 653, 36 Ohio Law Abs. 193.—Neglig 1079.

Ohio App. 8 Dist. 1940. A motorist's failure to provide his automobile with lights which would reveal objects 200 feet ahead, as required by statute, was "negligence per se." Gen.Code, § 6310-1 (repealed 1941. See §§ 6307-85, 6307-87).—*Buescher v. Ellenberger*, 34 N.E.2d 1013, 20 O.O. 534, 32 Ohio Law Abs. 545, affirmed 34 N.E.2d 777, 138 Ohio St. 332, 20 O.O. 544.—Autos 149.

Ohio App. 8 Dist. 1940. A motorist, whose admissions revealed that he could have seen parked truck in time to stop within assured clear distance ahead if his automobile had been equipped with proper headlights, was guilty of "negligence per se" contributing to cause collision with truck and barring recovery of damages, in absence of evidence that motorist was confused by lights of approaching automobile or that it suddenly and unexpectedly swerved into motorist's path, particularly where motorist's evidence of how accident happened was

contradicted by the physical facts. Gen.Code, §§ 6310-1, 12603 (repealed 1941. See §§ 6307-85, 6307-87, 6307-21).—*Buescher v. Ellenberger*, 34 N.E.2d 1013, 20 O.O. 534, 32 Ohio Law Abs. 545, affirmed 34 N.E.2d 777, 138 Ohio St. 332, 20 O.O. 544.—Autos 244(45), 244(58); Evid 265(18), 589.

Ohio App. 9 Dist. 1952. The specific requirement of a law or ordinance enacted in interest of public safety prescribes standard of care required, and failure to comply therewith is "negligence per se".—*Karr v. McNeil*, 110 N.E.2d 714, 92 Ohio App. 458, 50 O.O. 41.—Neglig 238, 259.

Ohio App. 9 Dist. 1952. Nineteen year old college student had same obligations as noninfant in observance of specific statutory regulations in operation of motor vehicle on public highways, and violation of statute and ordinance requiring motorist to stop at intersection upon caution light following green light was "negligence per se" and student was liable for injuries sustained by child struck by student's automobile in crosswalk. Gen.Code, § 6307-13(b).—*Karr v. McNeil*, 110 N.E.2d 714, 92 Ohio App. 458, 50 O.O. 41.—Autos 162(5).

Ohio App. 10 Dist. 1999. Distinction between "negligence" and "negligence per se" is the means and method of ascertainment; if a jury is able to determine from a single issue of fact that a defendant has violated a positive and definite legislatively enacted standard of care, then the violation constitutes negligence per se, but where the jury is asked to find the violation of an enactment from a consideration and evaluation of multiple facts and circumstances, negligence per se is not involved.—*Swart v. Ohio Dept. of Rehab. & Corr.*, 728 N.E.2d 428, 133 Ohio App.3d 420.—Neglig 259.

Ohio App. 10 Dist. 1999. If a positive and definite standard of care has been established by the legislature whereby a jury may determine whether there has been a violation thereof by finding a single issue of fact, then a violation constitutes "negligence per se".—*Woods v. Ohio Dept. of Rehab. & Corr.*, 726 N.E.2d 547, 132 Ohio App.3d 780, appeal after remand 2001 WL 69324, appeal after remand 2002-Ohio-204, on remand 2002-Ohio-3215.—Neglig 259.

Ohio App. 10 Dist. 1999. "Negligence per se" means that the plaintiff has conclusively established that the defendant breached the duty owed to the plaintiff.—*Woods v. Ohio Dept. of Rehab. & Corr.*, 726 N.E.2d 547, 132 Ohio App.3d 780, appeal after remand 2001 WL 69324, appeal after remand 2002-Ohio-204, on remand 2002-Ohio-3215.—Neglig 259.

Ohio App. 10 Dist. 1999. Alleged violations by Department of Rehabilitation and Correction (DRC) of its internal safety manual and of administrative rule prohibiting vehicles from having dangerous protruding objects did not constitute "negligence per se," for purposes of negligence claim by inmate who was injured when he fell off milk crate that he was sitting on in back of cargo van. Ohio Admin. Code § 4501:2-1-19.—*Woods v. Ohio Dept. of Rehab. & Corr.*, 726 N.E.2d 547, 132 Ohio App.3d 780, appeal after remand 2001 WL 69324,

appeal after remand 2002-Ohio-204, on remand 2002-Ohio-3215.—States 112.2(4).

Ohio App. 10 Dist. 1996. Court applies doctrine of “negligence per se” by recognizing a statute or administrative rule as fixing a standard of conduct deviation from which constitutes negligence; in other words, statute or rule establishes standard of conduct, thereby replacing in most cases the “reasonable person” standard.—*Bonds v. Ohio Dept. of Rehab. & Corr.*, 687 N.E.2d 300, 116 Ohio App.3d 144.—Neglig 238.

Ohio Com.Pl. 1996. Where there exists legislative enactment commanding or prohibiting for safety of others doing of specific act and there is violation of such enactment solely by one whose duty it is to obey it, such violation constitutes “negligence per se.”—*Boyd v. Watson*, 680 N.E.2d 251, 83 Ohio Misc.2d 88.—Neglig 259.

Okla. 1997. Statute’s violation is deemed “negligence per se” if claimed injury (1) was caused by violation and (2) was of type intended to be prevented by statute, and (3) injured party was member of class meant to be protected by statute.—*Lockhart v. Loosen*, 943 P.2d 1074, 1997 OK 103, corrected.—Neglig 259.

Okla. 1994. When courts adopt statutory standard for cause of action for negligence, violation of statute is “negligence per se.”—*Busby v. Quail Creek Golf and Country Club*, 885 P.2d 1326, 1994 OK 63, rehearing denied.—Neglig 259.

Okla. 1993. To constitute “negligence per se,” violation of statute or ordinance must have caused injury, harm sustained must have been of type intended to be prevented by statute or ordinance, and injured party must be one of class intended to be protected by statute.—*Hamilton v. Allen*, 852 P.2d 697, 1993 OK 46.—Neglig 259, 409.

Okla. 1991. For statutory violation to be “negligence per se,” injury must have been caused by violation, injury must be of type intended to be prevented by ordinance, and injured party must be one of class intended to be protected by statute.—*Ohio Cas. Ins. Co. v. Todd*, 813 P.2d 508, 1991 OK 54.—Neglig 259, 409.

Okla. 1954. Violation of statute penalizing the act of allowing salt water to flow over lands, constitutes “negligence per se” and the violator is liable for all damages proximately caused thereby. 52 O.S.1951 § 296.—*Tomlinson v. Bailey*, 289 P.2d 384, 1954 OK 178.—Mines 123.

Okla. 1942. If motorist, without justification, stopped his automobile in violation of city ordinance requiring a vehicle brought to a stop on city streets to pull over to right-hand curb, motorist was guilty of “negligence per se,” precluding recovery for his death if such violation contributed to his death.—*Tilbury v. Powell*, 130 P.2d 830, 191 Okla. 435, 1942 OK 365.—Autos 211, 226(2).

Okla. 1942. One driving automobile on public highway while under influence of intoxicating liquor is guilty of “negligence per se”. 47 Okl.St. Ann. § 93.—*Western States Grocery Co. v. Mirt*, 123

P.2d 266, 190 Okla. 299, 1942 OK 108.—Autos 157, 222.

Okla. 1941. If statute prohibiting pollution of waters for watering stock by refuse from tanks or oil wells is violated and injury results therefrom, liability attaches, violation of statute being “negligence per se”. 52 Okl.St. Ann. § 296.—*C.L. McMahon, Inc. v. Smith*, 118 P.2d 1022, 189 Okla. 579, 1941 OK 360.—Waters 74.

Okla. 1938. Violation of the statute penalizing the act of allowing salt water, waste oil, and inflammable products from oil or gas wells to flow over lands or into tanks, pools, or streams used for watering stock constitutes “negligence per se,” and justifies damages without proof of any negligence. 52 Okl.St. Ann. § 296, St. 1931, § 11580.—*Gulf Pipe Line Co. of Okl. v. Alred*, 77 P.2d 1155, 182 Okla. 400, 1938 OK 224.—Mines 123; Waters 67.

Okla. 1916. The Factory Act is a mandatory statute. The things expressly enumerated therein, together with machinery of every description, shall be properly guarded. This declares the fixed and settled public policy of the state touching these matters and things, and a violation of this act is made a crime and punishable as such. The sovereign, in order to afford greater and better protection to the lives and limbs of the subject who earns a livelihood by working with and around machinery, and in order to lessen the chances of accidents, has expressed her will in the solemn mandates of this mandatory and penal statute, which must be obeyed, and a failure to obey it becomes and is “negligence per se.”—*Sulzberger & Sons Co. of Oklahoma v. Strickland*, 159 P. 833, 60 Okla. 158, 1916 OK 605.

Okla. 1914. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, constitutes “negligence per se.” The sudden starting of a train from which an elderly female passenger was in the act of alighting, the train’s movement being directed by a brakeman of said train, who was assisting passengers to alight, and who at the time saw said elderly passenger on the car steps, and whereby and on account of said starting of the train, and the act of the brakeman in jerking said passenger from the steps, said passenger was caused to fall to the station platform and sustain serious injury, constitutes “negligence per se,” and the railway company is liable for the injuries sustained, the proximate result of its negligent acts.—*Chicago, R.I. & P. Ry. Co. v. Pitchford*, 143 P. 1146, 44 Okla. 197, 1914 OK 79.

Okla.App. Div. 3 1987. Under doctrine of “negligence per se,” violation of ordinance or statute is deemed negligence in and of itself, if injury is caused by violation of statute or ordinance and is type of injury that ordinance or statute is intended to prevent, and if party injured is within class of persons meant to be protected by statute or ordinance.—*Murry v. Advanced Asphalt Co.*, 751 P.2d 209, 1987 OK CIV APP 88.—Neglig 259.

Or. 1988. Doctrine of “negligence per se” does not, strictly speaking, create cause of action, but rather, refers to standard of care that law imposes

within cause of action for negligence.—*Gattman v. Favro*, 757 P.2d 402, 306 Or. 11.—Neglig 238.

Or. 1985. “Negligence per se” applies only to cases brought on a theory of liability for negligence rather than liability grounded in obligations created by statute.—*Shahtout By and Through Shahtout v. Emco Garbage Co., Inc.*, 695 P.2d 897, 298 Or. 598.—Neglig 259.

Or. 1980. When courts adopt statutory standard for a cause of action that would be common-law negligence, violation of statute is said to be “negligence per se.”—*Miller v. City of Portland*, 604 P.2d 1261, 288 Or. 271.—Neglig 259.

Or. 1979. Under doctrine of “negligence per se,” violation of a statute raises a disputable presumption of negligence if the violation results in injury to a member of the class of persons intended to be protected by the legislation and the harm is of a kind that the legislation was enacted to prevent.—*Brennen v. City of Eugene*, 591 P.2d 719, 285 Or. 401.—Neglig 1591.

Or. 1952. Violation of statute requiring drivers of motor vehicles to stop within 50 feet but not less than 10 feet from railway tracks before traversing railroad crossing would constitute “negligence per se”. ORS 483.226.—*Nichols v. Union Pac. R. Co.*, 250 P.2d 379, 196 Or. 488.—R R 327(7).

Or. 1930. Violation of state law in respect to right of way at street intersection constitutes “negligence per se.”—*Holmes v. Goble*, 285 P. 822, 132 Or. 540.—Autos 171(4.1).

Or. 1928. Truck driver’s failure to give signal when backing, required by statute, was “negligence per se”. Or.L. § 4773, subd. 10.—*Peters v. Johnson*, 264 P. 459, 124 Or. 237.—Autos 169.

Or. 1914. When a statute forbids a thing to be done and makes the doing thereof a misdemeanor, a violation of the statute is “negligence per se.”—*Beaver v. Mason, Ehrman & Co.*, 143 P. 1000, 73 Or. 36.

Or.App. 1997. Theory of “negligence per se” is available when statute or rule directly regulates defendant’s conduct, case turns on risks that rules are meant to prevent, and plaintiff is among those that statute or rule is designed to protect; in such situations, noncompliance with statute or rule is negligence as a matter of law, without regard for whether defendant met any common law standard of care.—*Hagan v. Gemstate Mfg., Inc.*, 939 P.2d 141, 148 Or.App. 192, review allowed 950 P.2d 894, 326 Or. 151, affirmed 982 P.2d 1108, 328 Or. 535.—Neglig 259.

Or.App. 1996. Under theory of “negligence per se,” which refers to standard of care that law imposes within cause of action for negligence, plaintiff may invoke statute or other governmental rule to supply standard of care that tort-feasor is expected to have met even though statute or rule neither expressly nor impliedly gives person injured by its violation any claim for damages.—*Harris v. Sanders*, 919 P.2d 512, 142 Or.App. 126, review denied 927 P.2d 598, 324 Or. 322.—Neglig 238.

Pa. 1944. Operation of tractor-trailer at speed of 30 to 40 miles per hour in violation of statute constituted “negligence per se”. 75 P.S. § 501.—*Landis v. Conestoga Transp. Co.*, 36 A.2d 465, 349 Pa. 97.—Autos 168(2).

Pa. 1942. It is not “negligence per se” to descend from a standing vehicle on the side toward the open road if careful observation is made of approaching vehicles.—*Hall v. Freaney*, 26 A.2d 454, 345 Pa. 45.—Autos 245(77).

Pa. 1942. It is not “negligence per se” for a blind person to go unattended on the sidewalk of a city, but he does so at great risk, and must do what a reasonably prudent person in his situation would do to ward off danger and prevent an accident.—*Smith v. Sneller*, 26 A.2d 452, 345 Pa. 68, 141 A.L.R. 718.—Mun Corp 804.

Pa. 1942. Coasting on street could not be said as a matter of law to be so manifestly dangerous that it would be court’s duty to declare it to be “negligence per se”, where numerous coasters during several days had been stopped by ashes placed by city employees and sled of minors was the only one known to have gone through ashes.—*Smith v. Pachter*, 25 A.2d 343, 344 Pa. 363.—Autos 245(74).

Pa. 1941. Coasting by children on a street not extensively used by public, if not expressly prohibited by ordinance, is not necessarily a “nuisance”, or “negligence per se”.—*Smith v. Pachter*, 19 A.2d 85, 342 Pa. 21.—Mun Corp 706(7).

Pa. 1940. The sale of any cartridge, gunpowder or other dangerous and explosive substance to a person under 16 years of age, in violation of statute is “negligence per se” and renders seller liable for any natural or probable harmful result which might follow in wake of his wrongful acts. 18 P.S. § 1191.—*Mautino v. Piercedale Supply Co.*, 13 A.2d 51, 338 Pa. 435.—Explos 9.

Pa.Super. 1996. “Negligence per se” is defined as conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to particular surrounding circumstances.—*Wagner v. Anzon, Inc.*, 684 A.2d 570, 453 Pa.Super. 619, reargument denied, appeal denied 700 A.2d 443, 549 Pa. 704.—Neglig 200.

Pa.Super. 1996. “Negligence per se” is conduct that may be treated as negligence without further argument or proof as to the particular surrounding circumstances.—*Gravlin v. Fredavid Builders and Developers*, 677 A.2d 1235, 450 Pa.Super. 655, appeal denied 687 A.2d 378, 546 Pa. 694.—Neglig 259.

Pa.Super. 1943. A violation of the mandatory provisions of statute prohibiting parking of vehicles in specified places would constitute “negligence per se”. 75 P.S. § 611.—*Valley Motor Transit Co. v. Allison*, 33 A.2d 485, 153 Pa.Super. 221.—Autos 173(4).

Pa.Super. 1941. A traveler on a highway when about to cross a street railway track must use his senses and must continue to look and listen for an approaching street car until he has reached the

track, and an absolute duty is imposed on him to look for street cars immediately before going on the track, and the failure to do so is "negligence per se".—*Rea v. Pittsburgh Rys. Co.*, 22 A.2d 68, 146 Pa.Super. 251, affirmed 25 A.2d 730, 344 Pa. 421.—Urb R R 26.

Pa.Super. 1941. Even if injured motorist who continued across intersection when he saw defendant's street car approaching decided incorrectly on a course of action when unexpectedly confronted with a sudden peril, his course of action would not be "negligence per se".—*Shearer v. Pittsburgh Rys. Co.*, 21 A.2d 482, 145 Pa.Super. 560.—Urb R R 30.

Pa.Super. 1941. Violation of mandatory provision of statute passed to aid safe operation of motor vehicles on public highways, such as provision that vehicle be driven on right half of two-way highway, is "negligence per se". 75 P.S. § 521.—*Gaskill v. Melella*, 18 A.2d 455, 144 Pa.Super. 78.—Autos 153.

Pa.Super. 1940. Whether driver of automobile, struck by truck at street intersection, should have stopped, instead of proceeding across intersecting through street, after seeing truck approaching thereon at higher rate of speed when 40 to 50 feet away than when first observed by such driver at distance of 200 to 250 feet from crossing, was for jury, as mere failure to decide correctly on course of action when unexpectedly confronted with sudden peril is not "negligence per se".—*Korenkiewicz v. York Motor Exp. Co.*, 10 A.2d 864, 138 Pa.Super. 210.—Autos 159, 245(49).

Pa.Super. 1938. Mere failure to decide correctly on a course of action when confronted with sudden danger is not "negligence per se".—*Flowers v. Pistella*, 200 A. 904, 132 Pa.Super. 338.

R.I. 1937. It is not "negligence per se" to keep and maintain an oiled floor in a department store.—*Faubert v. Shartenberg's, Inc.*, 195 A. 218, 59 R.I. 278.

S.C. 1942. The violation of an applicable statute is "negligence per se".—*Eickhoff v. Beard-Laney, Inc.*, 20 S.E.2d 153, 199 S.C. 500, 141 A.L.R. 1010.—Neglig 259.

S.C. 1941. Omission to give statutory crossing signals where train struck automobile was not only "negligence per se" and a violation of statutory duty on part of railroad, but it also bore upon conduct of driver and passenger in automobile, and affected any estimate of amount of care they should have observed. Code 1932, § 8377.—*Cook v. Atlantic Coast Line R. Co.*, 13 S.E.2d 1, 196 S.C. 230, 133 A.L.R. 1144.—R R 330(3).

S.C. 1940. Violation of the state pure food law is "negligence per se." Code 1932, § 1452 (See Code 1942, § 5128-27).—*Boylston v. Armour & Co.*, 12 S.E.2d 34, 196 S.C. 1.—Food 25.

S.C. 1940. Even if driver of truck, body of which was ten feet high on a level, was negligent in failing to observe roundness of street and that if truck was driven near curb, the truck would lean over sidewalk, and probably come in contact with combina-

tion marquee and sign, erection of the combination marquee and sign, 9 feet 8 inches above sidewalk in violation of ordinance requiring signs to be erected 10 feet above sidewalk, was "negligence per se" which contributed as a proximate cause to damage to marquee which was struck by truck, and precluded recovery.—*Shields v. Chevrolet Truck*, 12 S.E.2d 19, 195 S.C. 437.—Autos 204, 226(2).

S.C. 1940. Where city, while constructing an embankment or roadbed, failed to provide drains for surface water which was allegedly caused to drain upon plaintiff's property as consequence of city's negligence, city was guilty of "negligence per se", especially in view of evidence that plaintiff's representatives had made protests to city engineer in charge of streets concerning water which was draining onto plaintiff's property. Code 1932, § 7301.—*Macedonia Baptist Church v. City of Columbia*, 10 S.E.2d 350, 195 S.C. 59.—Mun Corp 829.

S.C. 1940. The violation of a statute, while "negligence per se," will not support a recovery for damages unless such violation proximately caused or contributed to the injury complained of.—*Locklear v. Southeastern Stages*, 8 S.E.2d 321, 193 S.C. 309.—Neglig 259, 409.

S.C. 1940. A railroad's failure to give crossing signals constitutes "negligence per se," and whether such negligence was proximate cause of injury is ordinarily a question for jury.—*Moore v. Atlantic Coast Line R. Co.*, 7 S.E.2d 4, 192 S.C. 406.—R R 312.2, 350(32).

S.C. 1940. As respects railroad's liability for death of motorist, violation of a highway traffic regulation by traveler constitutes "negligence per se", but unless such violation is a proximate cause of injury, it does not bar a recovery, such question being ordinarily for jury.—*Moore v. Atlantic Coast Line R. Co.*, 7 S.E.2d 4, 192 S.C. 406.—R R 324(3), 335(5), 350(32).

S.C. 1938. The violation of an ordinance is "negligence per se".—*Worrell v. South Carolina Power Co.*, 195 S.E. 638, 186 S.C. 306.—Neglig 259.

S.C. 1926. Railroad's violation of statute as to giving of signals at a public crossing is "negligence per se".—*Miller v. Atlantic Coast Line R. Co.*, 138 S.E. 675, 140 S.C. 123, certiorari denied *Camp Mfg Co v. Miller*, 48 S.Ct. 117, 275 U.S. 556, 72 L.Ed. 424.

S.C. 1926. Under Civ.Code 1922, § 4903, failure on part of railroad company to give statutory signals by bell or whistle at public crossing constitutes "negligence per se".—*Timmons v. Southern Ry. Co.*, 136 S.E. 27, 138 S.C. 82.

S.C. 1918. The violation of statute is "negligence per se," but not willfulness or recklessness or wantonness per se, being merely evidence of the latter, in an action for death.—*Keel v. Seaboard Air Line Ry.*, 95 S.E. 64, 108 S.C. 390.

S.D. 1967. A violation, without legal excuse or justification, of a statute enacted for reasons of safety constitutes "negligence per se." SDC

44.0316.—*Bothern v. Peterson*, 155 N.W.2d 308, 83 S.D. 84.—Neglig 259.

Tenn. 1918. The violation of a valid city ordinance is “negligence per se,” and where the violation is the proximate cause of an injury the violator is liable.—*Carroll Blake Const. Co. v. Boyle*, 203 S.W. 945, 140 Tenn. 166.

Tenn. 1917. The running of a railway engine at a rate of speed in excess of that permitted by an ordinance was “negligence per se.”—*Chattanooga Station Co. v. Harper*, 199 S.W. 394, 138 Tenn. 562.—R R 236, 372(2).

Tenn.Ct.App. 1984. Violation of statute is “negligence per se,” but is not proximate cause of injury unless causal connection is shown.—*Davidson v. Power Bd. of City of Pulaski*, 686 S.W.2d 581.—Neglig 259, 409.

Tenn.Ct.App. 1964. Action of plaintiff in driving his motorcycle to left of yellow line on a hill and attempting to pass panel truck driven by defendant in a no-passing zone in violation of statute constituted “negligence per se,” but such negligence did not necessarily constitute proximate cause of collision with truck which turned to left across center line without signaling, and it was question for jury to determine whether such negligence on part of plaintiff caused or contributed to his injuries. T.C.A. § 59–821.—*Vancleave v. Napier*, 399 S.W.2d 784, 55 Tenn.App. 313.—Autos 213, 226(2), 245(90).

Tenn.Ct.App. 1953. Action of automobile driver in overtaking and passing truck at intersection in violation of statute constituted “negligence per se”, but such negligence did not constitute proximate cause of collision with truck making left turn at intersection and would not bar recovery for injury and property damage sustained by automobile driver, if her violation of statute merely placed her in a position to be injured as the proximate result of violation of statute by truck driver in making left turn without first ascertaining whether such movement could be made in safety and without giving required signal of intention to make such movement. Code, §§ 2682(c), (d), subds. 1, 2, 6, 2686(c).—*Adams v. Brown*, 262 S.W.2d 79, 37 Tenn.App. 258.—Autos 209, 226(1), 226(2).

Tenn.Ct.App. 1941. The rule that it is “negligence per se” to enter upon a railroad track without looking or listening is applicable to the ordinary case in which person entering upon track was not prevented from seeing or hearing by any other circumstances and had the use of his faculties, and such rule is inapplicable only in exceptional cases in which facts relied upon as creating the exception are not superinduced by want of due care.—*Cincinnati, N.O. & T.P. Ry. Co. v. Garrett*, 154 S.W.2d 435, 25 Tenn.App. 173.—R R 327(2).

Tenn.Ct.App. 1940. Motorist’s violation of statutory duty to yield right of way to pedestrian at city street crossing, and of duty imposed by city ordinance to keep conveniently near curb on motorist’s right side, which ordinance was for protection of pedestrians as well as vehicles, was “negligence per

se.” Code 1932, § 2687(c).—*Hunter v. Stacey*, 141 S.W.2d 921, 24 Tenn.App. 158.—Autos 160(4).

Tenn.Ct.App. 1938. The failure of bank to have handrail on both sides of stairs leading to its safety deposit vaults in basement as prescribed by city ordinance was “negligence per se.”—*American Nat. Bank v. Wolfe*, 125 S.W.2d 193, 22 Tenn.App. 642.—Neglig 1110(3).

Tex. 2001. “Negligence per se” is a common-law doctrine that allows courts to rely on a penal statute to define a reasonably prudent person’s standard of care.—*Reeder v. Daniel*, 61 S.W.3d 359.—Neglig 238.

Tex.Crim.App. 1938. A person who injures another in the performance of an unlawful act is guilty of “negligence per se,” that is, negligence as a matter of law.—*Sage v. State*, 124 S.W.2d 376, 136 Tex.Crim. 252.—Crim Law 23.

Tex.Crim.App. 1935. Person who injures another in performance of unlawful act is guilty of “negligence per se,” that is, as a matter of law.—*Menefee v. State*, 87 S.W.2d 478, 129 Tex.Crim. 375.—Autos 344.

Tex.App.—Houston [1 Dist.] 1996. “Negligence per se” is tort concept whereby legislatively imposed standard of conduct is adopted by civil courts as defining conduct of reasonably prudent person.—*Richard v. Cornerstone Constructors, Inc.*, 921 S.W.2d 465, writ denied.—Neglig 238.

Tex.App.—Fort Worth 2001. “Negligence per se” is a common-law doctrine in which a duty is imposed based on a standard of conduct created by a penal statute rather than on the reasonably prudent person test used in pure negligence claims. (Per Day, J., with two judges concurring separately.)—*Pack v. Crossroads, Inc.*, 53 S.W.3d 492, rehearing overruled, and review denied, and rehearing of petition for review denied.—Neglig 238.

Tex.App.—Texarkana 2002. “Negligence per se” is a concept whereby a legislatively imposed standard of conduct is adopted by the civil courts as defining the conduct of a reasonably prudent person.—*Supreme Beef Packers, Inc. v. Maddox*, 67 S.W.3d 453, rehearing overruled, and review denied.—Neglig 238.

Tex.App.—Texarkana 1995. “Negligence per se” can be shown to exist if party violates statutorily specified standard of conduct; negligence per se is tort concept by which civil courts adopt legislatively imposed standard of conduct as defining conduct of reasonably prudent person, and unexcused violation of statute constitutes negligence as a matter of law if statute was designed to prevent injury to class of persons to which injured party belonged.—*Ward v. Northeast Texas Farmers Co-op. Elevator*, 909 S.W.2d 143, rehearing overruled, and writ denied.—Neglig 238, 259.

Tex.App.—Texarkana 1988. Tire company’s alleged violation of OSHA settlement agreement pertaining to guarding of skylights was not “negligence per se,” for which company could be held liable when subcontractor’s employee working on roof

stepped backward and fell through skylight.—*Wilson v. Goodyear Tire & Rubber Co.*, 753 S.W.2d 442, writ denied.—Neglig 1204(3).

Tex.App.—El Paso 1993. “Negligence per se” is unexcused violation of legislative enactment.—*Gem Homes, Inc. v. Contreras*, 861 S.W.2d 449, writ denied.—Neglig 259.

Tex.App.—Beaumont 1997. Unexcused violation of statute constitutes “negligence per se” if statute was designed to prevent injury to class of persons to which injured plaintiff belongs.—*Knighen v. Louisiana Pacific Corp.*, 946 S.W.2d 638, rehearing overruled, and writ granted, reversed 976 S.W.2d 674.—Neglig 259.

Tex.App.—Waco 1996. “Negligence per se” is established when plaintiff shows that defendant, without excuse, violated statute or ordinance, and plaintiff belongs to class of persons the statute or ordinance was designed to protect.—*Watson v. Brazos Elec. Power Co-op., Inc.*, 918 S.W.2d 639, rehearing overruled, and writ denied.—Neglig 259.

Tex.App.—Tyler 1995. Unexcused violation of statute constitutes “negligence per se” if that statute was designed to prevent injury to class of persons to which injured plaintiff belongs.—*Smith v. Merritt*, 929 S.W.2d 456, rehearing overruled, and writ granted, affirmed in part, reversed in part 940 S.W.2d 602.—Neglig 259.

Tex.App.—Tyler 1994. “Negligence per se” is a tort concept whereby a legislatively imposed standard of conduct is adopted by the civil courts as defining the conduct of a reasonably prudent person.—*Scott for J.L.R. v. Butcher*, 906 S.W.2d 16, rehearing overruled, and writ granted, reversed 906 S.W.2d 14.—Neglig 238.

Tex.App.—Corpus Christi 1997. Unexcused violation of statute setting an applicable standard of care constitutes “negligence per se” if statute is designed to prevent an injury to that class of persons to which injured party belongs.—*Wal-Mart Stores, Inc. v. Tamez*, 960 S.W.2d 125, rehearing overruled, and review denied.—Neglig 259.

Tex.App.—Corpus Christi 1993. “Negligence per se” is defined as unexcused violation of statute or ordinance which is designed to prevent injury to class of persons to which injured party belongs.—*Alvarado v. City of Brownsville*, 865 S.W.2d 148, rehearing overruled, and writ granted, reversed 897 S.W.2d 750.—Neglig 259.

Tex.Civ.App.—Fort Worth 1939. Where driver of automobile in which plaintiff was riding swerved to left to avoid preceding automobile which was headed as if to turn left across highway and collided with defendant’s oncoming truck, failure of driver of plaintiffs’ automobile to sound horn before turning and changing course in order to pass preceding automobile was “negligence per se.” *Vernon’s Ann.P.C. art. 801(K)*.—*Gillette Motor Transport v. Fine*, 131 S.W.2d 817, writ dismissed, correct.—Autos 209.

Tex.Civ.App.—Fort Worth 1936. To be deemed “negligence per se” act must have been done con-

trary to statutory duty, or it must appear so opposed to dictates of common prudence that it cannot be said that no careful person would have committed act.—*Daugherty v. Chicago, R. I. & G. Ry. Co.*, 94 S.W.2d 587, writ dismissed.

Tex.Civ.App.—San Antonio 1934. Driving automobile at speed exceeding 15 miles per hour while passing truck constitutes “negligence per se”. *Vernon’s Ann.P.C. art. 794*.—*Houston Oil Co. of Texas v. Wilson*, 70 S.W.2d 285, writ dismissed.—Autos 168(2).

Tex.Civ.App.—Dallas 1941. The waxing or oiling of floors by shopkeepers or building owners is a necessary and customary practice, and is not “negligence per se”.—*Russell v. Liggett Drug Co.*, 153 S.W.2d 231, writ refused w.o.m.—Neglig 1104(8).

Tex.Civ.App.—Amarillo 1955. In order that an act shall be deemed “negligence per se,” it must have been done contrary to a statutory duty, or it must appear so opposed to the dictates of common prudence that court can say, without hesitation or doubt, that no careful person would have committed it.—*Loving v. Meacham*, 278 S.W.2d 466, reversed 285 S.W.2d 936, 155 Tex. 279.—Neglig 233, 259.

Tex.Civ.App.—Amarillo 1955. A pedestrian was guilty of “negligence per se” in attempting to cross busy city street at intersection against a red traffic signal light in violation of statutory uniform traffic regulations, while an automobile was proceeding through intersection on a green light at right angles to path of pedestrian. *Vernon’s Ann.Civ.St. art. 6701d, §§ 1–156, 22, 26, 33(b)*, subd. 2, (c), subd. 2, 143(a).—*Loving v. Meacham*, 278 S.W.2d 466, reversed 285 S.W.2d 936, 155 Tex. 279.—Autos 217(4).

Tex.Civ.App.—Amarillo 1940. The acts of motorist in parking at night on traveled portion of highway when it was possible to park on borrow pit, in not leaving a space of at least 15 feet in the clear on traveled portion of highway, and in causing a truck and trailer to be parked on opposite side of highway so that a clear view of them was not available for a distance of 200 feet in each direction, constituted “negligence per se”, and, if such acts were the proximate cause of collision between approaching automobile and rear of truck and trailer, they were questions that should have been submitted to jury. *Vernon’s Ann.P.C. art. 827a, § 10*.—*Ruggles v. John Deere Plow Co.*, 146 S.W.2d 456, writ refused.—Autos 173(4), 245(17).

Tex.Civ.App.—Amarillo 1939. Where lawful rate of speed on street was 20 miles per hour, taxicab driver traveling at about 35 miles per hour was guilty of “negligence per se.”—*Hicks v. Brown*, 128 S.W.2d 884, modified 151 S.W.2d 790, 136 Tex. 399.—Autos 168(2).

Tex.Civ.App.—El Paso 1949. Operation of a motor vehicle over a public highway in state at a rate of speed greater than 60 miles per hour is “negligence per se”. *Vernon’s Ann.P.C. art. 827a, § 8*.—*McCullom v. McClain*, 227 S.W.2d 333, ref. n.r.e.—Autos 168(2).

Tex.Civ.App.—Waco 1940. Under statute providing that motorists shall travel upon right-hand side of highway unless road on left-hand side of highway is clear and unobstructed for at least 50 yards ahead, a motorist would not be guilty of “negligence per se” in driving on left-hand side of highway unless, at time of doing so, highway was not clear and unobstructed for at least 50 yards ahead. *Vernon’s Ann.P.C. art. 801.—Bettis v. Watkins*, 140 S.W.2d 280.—Autos 153.

Tex.Civ.App.—Waco 1940. An act contrary to statutory duty or so opposed to dictates of common prudence that no careful person would have committed it is “negligence per se.”—*Womack v. Tripp*, 137 S.W.2d 180.—Neglig 200, 259.

Tex.Civ.App.—Waco 1931. “Negligence per se” is a term which is frequently employed to designate an act or omission which is contrary to positive law, or so opposed to the dictates of common prudence that it can be said, without hesitation or doubt, that no careful person would have been guilty thereof.—*Ford Motor Co. v. Madden*, 42 S.W.2d 165, writ granted, affirmed 76 S.W.2d 474, 124 Tex. 131.

Tex.Civ.App.—Eastland 1939. Truck driver who failed to drive truck on his right-hand side of the highway which was not clear and unobstructed for a distance of at least 50 yards ahead when it was practicable to do so as to give approaching truck driver one-half of the road was guilty of “negligence per se.” *Vernon’s Ann.P.C. art. 801(A).—Wright v. McCoy*, 131 S.W.2d 52.—Autos 170(7).

Tex.Civ.App.—Galveston 1948. A motorist who at time of and immediately before collision was driving his automobile so that a portion thereof was on his left-hand side of the center of the highway violated the statute, and so was guilty of “negligence per se.” *Vernon’s Ann.P.C. art. 801(A).—Jessee Produce Co. v. Ewing*, 213 S.W.2d 750.—Autos 207.

Tex.Civ.App. 1908. It is well settled that, in order that an act shall be “negligence per se,” it must have been done contrary to a statutory duty, or it must appear so opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have committed it.—*St. Louis Southwestern Ry. Co. of Texas v. Hawkins*, 108 S.W. 736, 49 Tex.Civ.App. 545, writ refused.

Utah 1998. “Negligence per se”, which usually results from violation of statute, is conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to particular surrounding circumstances.—*Child v. Gonda*, 972 P.2d 425, rehearing denied.—Neglig 259.

Utah 1943. The driving of automobile to left of center of highway at time of collision was not, of itself, an unlawful act, nor “negligence per se.”—*Thompson v. Civil Service Commission of Provo City*, 134 P.2d 188, 103 Utah 162.—Autos 245(3).

Va. 1953. The violation of statute constitutes “negligence per se,” and if it proximately causes or contributes to injury, it will support recovery for

such injury.—*McClanahan v. California Spray-Chemical Corp.*, 75 S.E.2d 712, 194 Va. 842.

Va. 1942. A passenger is guilty of “negligence per se” in voluntarily alighting from a moving train, except in case where there is well-founded apprehension of peril to life or limb induced by negligence of carrier, or in a case where passenger is invited to alight by agent of carrier, or is told that he may do so in safety provided the train has not attained such speed that the danger would be obvious, or the place of alighting is obviously dangerous.—*Chesapeake & O. Ry. Co. v. Butler*, 20 S.E.2d 516, 179 Va. 609.—Carr 333.

Va. 1942. It is not “negligence per se” to cross the crest of a hill at the legal maximum rate of 55 miles per hour in view of absence of statute regulating speed of motor vehicles surmounting a hill. *Code Supp.1940, § 2154(108).—Noland v. Fowler*, 18 S.E.2d 251, 179 Va. 19.—Autos 245(78).

Va. 1939. The violation of a statute while “negligence per se” will not support a recovery for damages unless such violation proximately caused or contributed to the injury complained of.—*Hubbard v. Murray*, 3 S.E.2d 397, 173 Va. 448.—Neglig 259, 409.

Wash. 1985. “Negligence per se” exists when statute or ordinance is violated, and that law is designed to protect class of person which includes person whose interest is invaded, protect particular interest which is invaded, protect against kind of harm which resulted, and protect that interest against particular hazard from which harm results.—*Bauman by Chapman v. Crawford*, 704 P.2d 1181, 104 Wash.2d 241.—Neglig 259.

Wash. 1946. Automobile owners had a positive duty under statute to have their automobile equipped with brakes capable of holding it on any plus or minus grade upon which it was to be operated, and a violation of such statute would constitute “negligence per se”. *Rem.Rev.Stat. § 6360-34.—McCoy v. Courtney*, 172 P.2d 596, 25 Wash.2d 956, 170 A.L.R. 603.—Autos 148.

Wash. 1946. Violation of statute requiring operator of motor vehicle, when leaving it unattended upon a perceptible grade, to set the brake effectively and turn front wheel against curb or side of roadway, constitutes “negligence per se”, and putting automobile in gear does not meet the requirements of the statute. *Rem.Rev.Stat. § 6360-109.—McCoy v. Courtney*, 172 P.2d 596, 25 Wash.2d 956, 170 A.L.R. 603.—Autos 211.

Wash. 1943. Use of mixture of corn meal with another substance to make floor smooth for dancing was not “negligence per se”, imposing liability for injury to invitee where there was no evidence that owner of floor did not use approved method of putting the mixture on the floor, or that mixture was not proper mixture for purpose for which mixture was there used.—*Kalinowski v. Young Women’s Christian Ass’n*, 135 P.2d 852, 17 Wash.2d 380.—Neglig 1104(6).

Wash. 1942. A violation of the statute providing that it shall be unlawful for any person operating a

vehicle on any public highway outside incorporated cities and towns to overtake and pass another vehicle on any highway structure, tunnel or underpass or within 500 feet of the approach thereof is "negligence per se". Rem.Rev.Stat. § 6360-79.—Comstock v. Pierce County, 127 P.2d 264, 14 Wash.2d 80.—Autos 209.

Wash. 1942. Motorist's failure to come to a complete stop before entering intersection with an arterial highway and yield the right of way to automobile approaching intersection at a speed of 70 or 75 miles per hour and approximately 315 feet distant when he entered traveled portion of arterial highway at a speed of three to four miles per hour constituted "negligence per se" and was a "contributory cause" of the collision, barring recovery for death of the motorist. Rem.Rev.Stat. § 6360-90.—Miller v. Asbury, 125 P.2d 652, 13 Wash.2d 533.—Autos 208, 226(2).

Wash. 1942. Where the violation of a statute which has as its purpose the prevention of injury to persons or property is the proximate cause of an injury, the violation of the statute is "negligence per se".—Schofield v. Northern Pac. Ry. Co., 123 P.2d 755, 13 Wash.2d 18.—Neglig 259, 409.

Wash. 1942. On question of railroad's liability for death of truck passenger killed in collision with train at grade crossing at night, where driver of truck, which was transporting inflammable liquid, was thoroughly familiar with highway and knew that there was a grade crossing just beyond intersection blinker light, even if light made it difficult for driver to see passing train, driver's violation of statute requiring every vehicle transporting inflammable liquids to come to a full stop at any railroad or interurban grade crossing was "negligence per se". RCW 46.60.320.—Schofield v. Northern Pac. Ry. Co., 123 P.2d 755, 13 Wash.2d 18.—R R 337(1).

Wash. 1941. The violation of a statute intended to prevent injury to persons or property constitutes "negligence per se" and, if it contributes proximately to injury, is actionable negligence, but negligence of an injured person is not a bar to recovery unless his negligence in some degree contributes to the injury.—Bernard v. Portland Seattle Auto Freight, 118 P.2d 167, 11 Wash.2d 17.—Neglig 259, 409, 453.

Wash. 1941. The "stop, look and listen" rule, ordinarily applied in railroad cases, is not applied to street car cases, and it is not necessarily "negligence per se" for one to enter upon street car tracks without stopping, looking and listening.—Hynek v. City of Seattle, 111 P.2d 247, 7 Wash.2d 386.—Urb R 30.

Wash. 1940. The failure to ring bell or sound whistle of locomotive, pulling a train, a car of which was struck by a truck in which deceased was riding, would be "negligence per se" within the statute requiring the giving of signals a certain distance from road crossing, irrespective of the fact that the locomotive had already passed over crossing when car was struck. RCW 81.48.010.—Schofield v. Northern Pac. Ry. Co., 104 P.2d 324, 4 Wash.2d 512.—R R 313.

Wash. 1913. For a street railroad to exceed the lawful speed limit is "negligence per se".—O'Brien v. Washington Water Power Co., 129 P. 391, 71 Wash. 688.

Wash.App. Div. 1 1978. Breach of a tavern keeper's duty to refrain from selling intoxicating liquor to persons under 21 years of age is "negligence per se." RCWA 26.28.010, 26.28.080, 66.04.010 et seq., 66.08.010, 66.44.180, 66.44.270, 66.44.310, 66.44.320.—Callan v. O'Neil, 578 P.2d 890, 20 Wash.App. 32.—Int Liq 310.

W.Va. 1941. In absence of a controlling statute, the rapid movement of an interurban electric car while crossing open country highway, is not "negligence per se".—McClagherty v. Tri-City Traction Co., 14 S.E.2d 432, 123 W.Va. 112.—R R 350(11).

W.Va. 1891. In cases where the common experience of mankind and the common judgment of prudent persons have recognized that to do or omit to do certain acts is prolific of danger, the doing or omission of them is "negligence per se," or "legal negligence." The omission of a duty enjoined by law for the protection and safety of the public by a common carrier, or the doing of an act by such a carrier which by the common experience and consensus of prudent persons would create danger to passengers, is legal negligence. It is legal negligence for a passenger to ride in a fast-going passenger coach with his arm protruding out of the window and beyond the line of the body of the car.—Carrico v. West Virginia Cent. & P. Ry. Co., 14 S.E. 12, 35 W.Va. 389.

Wis. 2001. "Negligence per se" means that an inference of negligence is drawn from the conduct as a matter of law but the inference may be rebutted.—Lambrecht v. Estate of Kaczmarczyk, 623 N.W.2d 751, 241 Wis.2d 804, 2001 WI 25.—Neglig 1591.

Wis. 1974. Construction worker who was working on a "cofferdam" on the surface of a stream bed was not working on a "trench" or on a "caisson" and thus workman's failure to wear hard hat did not violate administrative code and did not constitute "negligence per se".—Lemberger v. Koehring Co., 216 N.W.2d 542, 63 Wis.2d 210.—Neglig 1296.

Wis. 1967. Generally, where statute is designed to protect a class of persons from a particular type of harm, a violation of statute which results in that type of harm to someone in protected class constitutes "negligence per se".—Kalkopf v. Donald Sales & Mfg. Co., 147 N.W.2d 277, 33 Wis.2d 247.—Neglig 259.

Wis. 1966. Generally, where a statute is designed to protect a class of persons from a particular type of harm, a violation of statute which results in that type of harm to someone in protected class constitutes "negligence per se".—Meihost v. Meihost, 139 N.W.2d 116, 29 Wis.2d 537.—Neglig 259.

Wis. 1942. Failure to have end gate in place on truck from which plaintiff was thrown when part of load of tobacco began to slide off over end of truck was "negligence per se", but was not necessarily

actionable negligence. St.1939, §§ 85.38, 85.91(2).—*Dach v. General Casualty Co.*, 4 N.W.2d 170, 241 Wis. 34.—*Autos* 181(1).

Wis.App. 1996. Conduct is negligent either because it will foreseeably cause harm or because it violates safety statute where statutory purpose is to avoid or diminish likelihood of harm that resulted; latter case is “negligence per se.”—*Miller v. Thomack*, 555 N.W.2d 130, 204 Wis.2d 242, review granted 555 N.W.2d 814, 205 Wis.2d 133, affirmed 563 N.W.2d 891, 210 Wis.2d 650.—*Neglig* 213, 259.

NEGLIGENCE PROXIMATELY CAUSING INJURY

Ga.App. 1975. “Negligence proximately causing injury” is such an act that a person of ordinary caution and prudence could have foreseen that some injury might likely result therefrom.—*Harris v. Hardman*, 212 S.E.2d 883, 133 Ga.App. 941.—*Neglig* 387.

NEGLIGENCE RESULTING IN BODILY INJURY TO STUDENTS

Tex.App.—Dallas 1984. With regard to statute providing that no professional school employee shall be personally liable for acts within scope of his employment, except in circumstances where employees use excessive force in discipline of students or negligence results in bodily injury to students, phrase “negligence resulting in bodily injury to students,” is directed at manner of student discipline in which no force is used but negligence in the imposition of the punishment results in bodily injury to the student. V.T.C.A., Education Code § 21.912(b).—*Diggs v. Bales*, 667 S.W.2d 916, ref. n.r.e.—*Schools* 63(3).

NEGLIGENCE RULE

Iowa 1993. Under “negligence rule,” statute of limitations begins to run when negligence occurs, but under “discovery rule,” statute begins to run when injured party discovers cause of action.—*Hasbrouck v. St. Paul Fire and Marine Ins. Co.*, 511 N.W.2d 364.—*Lim of Act* 55(2), 95(1).

NEGLIGENCES

Me. 1948. In personal injury action, it should appear from circumstances that defendant was negligent and that plaintiff was using due care, and, if result was produced by a commingling of “negli-

gences” of the two parties, plaintiff cannot recover, standard of measurement for both parties being the care exercised by a person who is ordinarily prudent and thoughtful.—*Barlow v. Lowery*, 59 A.2d 702, 143 Me. 214.—*Neglig* 232, 453, 503.

NEGLIGENCE SO GROSS, WANTON AND CULPABLE AS TO SHOW RECKLESS DISREGARD OF HUMAN LIFE

Va.App. 1989. Driver’s act of traveling for seven or eight miles in wrong direction on divided highway against oncoming traffic was callous act of indifference and constituted “negligence so gross, wanton and culpable as to show reckless disregard of human life” within meaning of involuntary manslaughter statute, even though driver was not actually aware of wrong direction. Code 1950, § 18.2-36.—*Keech v. Com.*, 386 S.E.2d 813, 9 Va. App. 272.—*Autos* 344.

NEGLIGENCE THAT OCCURS BY OR AS A CONTEMPORANEOUS RESULT OF AN ACTIVITY

Tex.App.—Austin 2001. “Negligence that occurs by or as a contemporaneous result of an activity” means doing or failing to do what a person of ordinary prudence in the same or similar circumstances would have not done or done.—*Mansfield v. C.F. Bent Tree Apartment Ltd. Partnership*, 37 S.W.3d 145.—*Neglig* 232.

NEGLIGENCE THAT RESULTS FROM A CONDITION CREATED BY THE ACTIVITY

Tex.App.—Austin 2001. “Negligence that results from a condition created by the activity” means a failure to use ordinary care to reduce or eliminate an unreasonable risk of harm created by a premises condition which the owner of land knows about or in the exercise of ordinary care should know about.—*Mansfield v. C.F. Bent Tree Apartment Ltd. Partnership*, 37 S.W.3d 145.—*Neglig* 1032, 1033.

NEGLIGENCE UNDER THE HUMANITARIAN DOCTRINE

Mo. 1940. “Negligence under the humanitarian doctrine” does not include antecedent negligence.—*Pitcher v. Schoch*, 139 S.W.2d 463, 345 Mo. 1184.—*Neglig* 530(1).